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14.03.
2024
Ct. No.652

C. O. 2798 of 2019

**Durga Shankar Das Bhaya & Ors.
Vs
The State of W. B. & Ors.**

**Mr. Rabindranath Mahato
Mr. Aritra Shankar Ray
.....For the Petitioners**

**Mr. Wasim Ahmed
Sk. Md. Masud
.....For the Respondent Nos. 1 to 3**

The petitioners herein as plaintiffs instituted Title Suit No. 89 of 2011 against the opposite party nos. 1 to 6 praying for declaration that they have right, title and interest over the suit passage in respect of 1/3rd share and the entry in the Revisional Settlement Records of Right is erroneous along with further prayer for injunction restraining the defendant nos. 1 to 6 from disturbing plaintiffs' peaceful possession and enjoyment of suit property with the defendant nos. 7 to 17.

On February 2, 2019 the petitioners filed an application for amendment of the plaint contending that on and from 16.11.2018 the proforma defendants, claiming northern portion of the suit pathway as their exclusive land, and taking advantage of owning adjacent land are creating obstruction in the use of the suit property by

plaintiffs and thereby they are trying to encroach northern portion of the suit pathway, though they do not have any right to create obstruction over the suit pathway. Learned court below by the impugned order rejected the plaintiffs' prayer for amendment.

Mr. Mahato, learned counsel appearing on behalf of the petitioners submits that the court below has acted illegally and with material irregularity in rejecting the application for amendment, under a misconception of law that such amendment if allowed will change the nature and character of the suit property, inasmuch as the passage in question having been mentioned in the plaint, better particulars relating to such passage given by the petitioners by way of amendment cannot be rejected treating the same as new facts. Accordingly, the petitioners have prayed for setting aside the order impugned. In this context he relied upon a Judgement of a Co-ordinate Bench of this Court in **Rajani Kania Burman Vs. Union of India**, reported in **2002 SCC online Cal 197** and contended that by way of proposed amendment the plaintiffs have not sought for any additional relief in the plaint and even if the proposed amendment is allowed, it will not change the nature and character of the suit.

Mr. Wasim Ahmed, learned counsel appearing on behalf of the respondent nos. 1 to 3 raised objection contending that the proposed amendment clearly relates to a separate cause of action and if it is allowed, it will definitely change the nature and character of the suit and as such the court was justified in rejecting the prayer for amendment. In such view of the matter the order impugned is quite lawful and does not call for interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties. On perusal of the schedule for amendment, it appears that the proposed amendment basically relates to subsequent event. Moreover the suit principally relates to plaintiffs' claim over suit passage for their rights to egress and ingress through the suit passage. Even if the proposed amendment is allowed, it will not change the nature and character of the suit because even after the amendment, the suit will remain a suit for declaration and injunction about plaintiffs' right, title and interest over the suit passage.

Learned court below rejected the amendment application on the ground that a new cause of action

has been sought to be incorporated by way of amendment and if allowed will change the nature and character of the suit, but he failed to appreciate that subsequent event must be included to adjudicate the controversy between the parties effectively and conclusively. Moreover one of the main objects of amendment of pleading is to minimize litigation between the parties.

In such view of the matter I am of the opinion that for complete and effective adjudication of the points in controversy between the parties, the proposed amendment ought to be allowed and if an opportunity to file additional written statement be given to the defendants, the defendants will have no cause to prejudice.

In such view of the matter C. O. 2798 of 2019 is allowed. The impugned order is hereby set aside.

The plaint is amended as per schedule of the petition for amendment, dated 22nd February, 2019.

Plaintiffs are directed to file amended plaint within a period of three weeks from the date of communication of the order. On such filing of the amended plaint by the plaintiffs, the defendants will

get an opportunity to file additional written statement within a period of three weeks thereafter.

The court below will be at liberty to frame additional issue, if required, on the basis of additional pleading and will expedite the final hearing of the suit.

Urgent photostat certified copy of this order, if applied for, be given to the parties on urgent basis after completion of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)