

24.01.2024
Item No.34
RP
Ct. No.7

CO 3350 of 2023
Sneha Shaw & Ors.
Vs.
Ram Prasad Ghosh & Anr.

Mr. Ranjit Kumar Roy
.... For the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendants challenging the order no.35 dated 9th August, 2023 passed in TS No.59 of 2022. By the said order the application under Order 6 Rule 17 of the Civil Procedure Code, 1908 was allowed.

The learned advocate appearing for the petitioners submits that there was no whisper in the original plaint about the facts which the plaintiffs/opposite parties herein are now seeking to introduce by way of amendment. He further submits that the opposite parties have sought for incorporation of further reliefs byway of amendment which, if allowed, would result in changing the nature and character of the suit.

It appears from the plaint that the opposite parties have specifically stated that neither Bansidhari Ghosh nor his legal heirs has transferred the suit property to Kanailal Sur. It was also pleaded in the plaint that plaintiffs have come to learn that the legal heirs of Kanailal Sur by practicing fraud and in collusion with the employees of the LR Settlement have deleted the names of the sons of Bansidhari Ghosh without serving any notice upon the sons of Bansidhari Ghosh, namely, Sujit Kumar Ghosh and Ajit Kumar Ghosh.

The defendants in their written statement have claimed that Kanailal Sur obtained the property comprised in LR Dag No.641 by way of a registered deed of Bengali Kobala dated 21.5.1969 executed by erstwhile owners, namely, Sri Ajit Kumar Ghosh and Sujit Kumar Ghosh, both sons of late Bansidhari Ghosh.

The opposite parties herein have filed an application under Order 6 Rule 17 of the Civil Procedure Code, 1908 for amendment of plaint for incorporation of certain facts and for adding further reliefs.

After going through the schedule of amendment this Court finds that the opposite parties herein have sought to incorporate the fact that the alleged deed of 1969 is fraudulent, void and forged document and the same was never executed by Sujit Kumar Ghosh and Ajit Kumar Ghosh. The plaintiffs have also sought for incorporation of a prayer for declaration that the deed of sale being no.3317 for the year 1969 is fraudulent, void and forged and the same was obtained by practicing fraud and false personification and therefore not binding upon the plaintiffs.

Merely because of the fact that the opposite parties have claimed further reliefs by way of amendment in the light of the facts proposed to be incorporated, this Court is of the considered view that incorporation of such prayer cannot be said to change the nature and character of the suit as the suit even after amendment remains a suit for declaration.

The learned trial Judge took note of the fact that the plaintiffs/opposite parties came to know about the alleged deed of sale, being no.3317 of 1969, after filing of the amended written statement. The learned trial Judge rightly observed that the proposed

amendments are necessary for the purpose of deciding the real controversy between the parties. Since the fact of execution of the deed of sale for the year 1969 was disclosed in the amended written statement, this Court is of the considered view that the proviso to Order 6 Rule 17 of the Civil Procedure Code, 1908 cannot be an embargo in the instant case.

The learned trial Judge assigned cogent reasons for allowing the application for amendment and the impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

For all the reasons aforesaid, CO 3350 of 2023 stands dismissed. There shall, however, be no order as to costs.

(HIRANMAY BHATTACHARYYA, J.)