

26.02.2024
Item No.13
gd/ssd

CO/3366/2023
BADAL PATHAK @ BADAL CHANDRA PATHAK & ANR.
VS
NANTU KAYET & ORS.

Mr. Rabindranath Mahato,
Mr. Debabrata Chakrabarty,
Mr. Aritra Shankar Ry
..for the Petitioners.

Mr. Raj Kumar Sain
..for the O.P. No.1.

The defendant nos.1 and 2 in a suit for declaration of title, confirmation of possession and alternatively for recovery of possession has filed the civil order challenging the Order No.34 dated 28th August, 2023 passed by the learned Civil Judge (Junior Division), 1st Court, Tamruk, District-Purba Medinipur.

Mr. Mahato, learned Advocate appearing for the petitioners submits that by the proposed amendment the plaintiff sought to delete paragraph 7 of the original plaint which amounts to withdrawal of the admissions contained in Paragraph 7 of the original plaint. He submits that admissions cannot be withdrawn by way of amendment.

The learned advocate appearing for the opposite party no.1 submits that by virtue of the amendment the plaintiff did not seek to withdraw

any admission but only tried to clarify the statements made in the original plaint.

The opposite party no.1 filed a suit for declaration of his title in respect of the property mentioned in the schedule to the plaint. In paragraph 7 of the original plaint, the plaintiff has refused to execution of certain deed of Bhuban Chandra Barman in favour of the Raghunath Kayet.

In the application for amendment it has been stated that description of the deeds of the predecessor-in-title of the plaintiff has not been mentioned correctly. The plaintiff by way of amendment wanted to incorporate the chain of devolution of title in his favour. Such amendment do not have the effect of changing the nature and character of the suit. No right can also be said to have accrued in favour of the defendants by reason of mistaken reference of some deeds in the original plaint.

From the schedule of the application for amendment of plaint, it appears that the plaintiff has clarified as to how he acquired title in respect of Suit Dag No.2337 by way of successive transfers.

This court, therefore, holds that the proposed amendments by way of inserting Paragraph 7 in place of the Paragraph 7 of the original plaint cannot be said to be withdrawal of admission but the same

was to clarify as to how the plaintiff acquired title to the property. Such amendment, in my view, is necessary for deciding the real controversies between the parties.

It is well settled that the plaintiff in order to succeed in the suit has to prove the case made out in the amended plaint and the defendant will have an opportunity to controvert such pleading by filing additional written statement.

For the reasons aforesaid, this court is not inclined to interfere with the order allowing the amendment of plaint.

CO 3366 of 2023 stands dismissed without however no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)