

22.04.2024
Item No.9
PG
Ct. No.7

C.O. 3377 of 2023
With
I.A. No. CAN 1 of 2024
Sri Gautam Das & Anr.
Versus
Sri Dinabandhu Das & Anr.

Mr. Tanmoy Chowdhury
Ms. Ritoprita Ghosh.....for the petitioners

Mr. P.K. Banerjee
Mr. S. Ghosh.....for the opposite parties

- 1.** This Civil Order is at the instance of the plaintiffs and is directed against an order being no. 18 dated 13th July, 2023 passed by the Civil Judge (Junior Division), Additional Court, Chandernagore in Title Suit No. 91 of 2022.
- 2.** Petitioners filed a suit for declaration that they are the owners and possessors of the A-Scheduled property and the C-Scheduled property is the only passage for ingress and egress to Schedule-A property and that they have got right of user over the C-Scheduled property and the defendant no. 1 has no right to obstruct the same in any way. A decree for permanent injunction has also been prayed for.
- 3.** The learned trial Judge by an order being no. 2 dated 15th March, 2022 passed an ad-interim order of injunction restraining the defendant/opposite party no.

1 herein from obstructing or blocking the C-Scheduled common passage till the next date of hearing.

4. The learned trial Judge, by an order dated 15th September, 2022, disposed of the temporary injunction application by directing the parties to the lis to maintain *status quo* in respect of the nature, character and possession over the C-Scheduled property as on the date of passing such order till the disposal of the said suit.
5. Alleging that the opposite parties herein, have installed an iron grill gate over the C-Scheduled common passage to obstruct the entrance of the plaintiffs in the A-Scheduled property during the pendency of the suit, in violation of the order of injunction, the petitioners filed an application under Order VI Rule 17 of the Code of Civil Procedure *inter alia*, praying for amendment of plaint for incorporating the fact of installation of the iron grill gate over the C-Scheduled common passage.
6. The learned trial Judge by the order impugned, rejected such application. Being aggrieved, the plaintiffs have approached this Court.
7. Affidavit of service filed in Court today is taken on record. The opposite party no. 1 is represented by Mr. Banerjee, assisted by Mr. Ghosh.
8. Heard the learned advocates for the parties and perused the materials placed.

- 9.** It appears that the defendant/opposite party no. 1 in the written statement have specifically denied the fact that such iron grill gate was installed on 14th February, 2022, as alleged by the plaintiffs in the application for amendment of plaint. It was specifically stated in the written statement that the defendant has installed the iron grill gate 20 years back in order to restrain the illegal persons from entering into the B-Scheduled dwelling house.
- 10.** The learned trial Judge after noting the statements made in the written statement observed that installation of grill gate cannot be said to be a subsequent event. It is the specific case of the opposite party that the grill gate was installed prior to the institution of the suit. Since the fact of installation of grill gate was already pleaded in the written statement, there is no necessity to allow the plaint to be amended in order to incorporate the fact of installation of the grill gate. It is for the petitioners to prove their case of installation of the grill gate during the pendency of the suit. It is well-settled that it is not necessary to amend the plaint to controvert the statement made in the written statement.
- 11.** The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.
- 12.** Accordingly, C.O. 3377 of 2023 stands dismissed.

- 13.** In view of the aforesaid order, nothing survives for decision in I.A. No. CAN 1 of 2024 and the same is also disposed of accordingly.
- 14.** There shall be, however, no order as to costs.
- 15.** Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)