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03.09.2024

*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. No. 3568 of 2023

**Gobinda Chandra Ghosh @ Dolgobinda Ghosh @
Gobinda Ghosh**

Vs.

Madhab Mondal & Ors.

Mr. Uttiya Ray,
Mr. Arnab Mandal ... For the petitioner.

Mr. Soumik Ganguly,
Mr. Lalratan Mandal,
Mr. Dilip Kumar Sadhu ... For the opposite parties.

The plaintiff in a suit for declaration and injunction is the petitioner of the instant application under Article 227 of the Constitution of India, which is directed against the Order No. 28 dated August 17, 2023 passed by the 3rd Court of learned Civil Judge, (Junior Division) at Purba Bardhaman, in the said suit being Title Suit No. 85 of 2021.

The learned Trial Judge by the order impugned has dismissed an application filed by the plaintiff for amendment of the plaint holding that the fact sought to be incorporated by way of amendment was within the knowledge of the plaintiff at the time of filing of the suit.

Mr. Roy, learned advocate for the petitioner submits that the amendment sought for is absolutely formal in nature and the said application was taken out to correct the description of the suit property.

Mr. Ganguly, learned advocate for the defendants, the opposite parties herein, in response, submits that the plaintiff had filed similar type of application for amendment but had withdrawn it without obtaining the leave, as required under Order XXIII Rule

1(3) of the Code, to file a fresh application, therefore, the plaintiff is not entitled to maintain the second application for amendment.

In reply, Mr. Roy submits that there were typographical errors in the earlier application for amendment for which it was withdrawn.

Heard learned counsel for the parties, perused the materials-on-record.

The proposed amendment is for the purpose of correcting the typographical errors in the description of the suit property, such correction, for the purpose of effective adjudication of the suit, is necessary. Order XXIII Rule 1(3) of the Code puts a bar on filing of the suit on the selfsame subject-matter, if such suit is withdrawn without obtaining the leave of the Court to file a fresh suit but the said bar cannot be extended to apply in respect of an interlocutory application, therefore the objection in this regard is overruled.

The order impugned, for the aforesaid reason, is set aside. The application for amendment of the plaint of the connected suit is allowed.

The plaintiff is required to file the amended plaint within a period of two weeks from date, the defendants are at liberty to file additional written statement within a period of two weeks from the date of service of the copy of the said amended plaint.

C.O. 3568 of 2023 is thus allowed with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)