

Ct. No. 652
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C.O. 1474 of 2020
Nasirudding Sekh & Ors.
-Versus-
Md. Ali Sekh & Anr.

Mr. Partha Pratim Roy ...For the Petitioner

Mr. Mrinmay Bhattacharyya
Mr. N.C. Dey ...For the Opposite Party No. 1

This application under Article 227 of the Constitution of India has been directed against order dated 6th August, 2019 passed by the learned Civil Judge, (Junior Division), 2nd Court at Kandi Murshidabad in Title Suit No. 122 of 2017.

The petitioners herein as plaintiffs filed aforesaid suit for declaration of title and for permanent injunction against the opposite parties herein.

In the plaint the plaintiffs have contended that the plaintiffs are the owners in respect of the property in question and the defendants having no right title or interest in the said property but they are trying to disturb plaintiffs' possession in the suit property. The defendants contested the aforesaid suit by filing written statement denying all material allegations made in the plaint and it is the specific case of the defendants in their written statement that Fakir Mondal admittedly was the original owner of the property but he died leaving behind two sons, Golam Ismail and Golam Ambia and three daughters, Jamela Bibi, Sakina Khatun @

Sakina Bibi and Afiya Khatun @ Afiroon Khatun. Petitioners' further case is that all the legal heirs have transferred their shares in the suit property in favour of Md. Nurul Islam and Others by registered Deed, being Deed Nos. 1731 and 1732 . Thereafter Md. Nurul Islam transferred the same in favour of Kuresh Ali and others by a registered Deed, being Deed No. 1969 of 2013 and they have also sold in favour of sons of defendant No. 1 by another registered Deed, being Deed No. 1968 of 2013. Accordingly the plaintiffs having no right, title or interest over the suit property. Defendants further case is that another suit in between Kuresh Ali and others and sons of Md. Ali Sekh is pending being Partition Suit No. 205 of 2013.

During pendency of the suit plaintiffs thereafter came out with an application for amendment of the plaint challenging the aforesaid averments of the defendants made in the written statement. In the proposed amendment application, the plaintiffs have stated that the aforesaid Deed mentioned in paragraph 7 of the written statement, being Deed No. 1731 dated 12th March 1962 is void and inoperative and accordingly for declaration of the two deeds, being Deed Nos. 1731 dated 12.3.1962 and Deed No. 1968 dated 25th March, 2013 as null and void.

Learned Court below by the impugned order

rejected the plaintiffs' aforesaid prayer for amendment on the ground that the description of the deed mentioned in the petition does not tally with the deeds referred by the defendants in their written statement.

Being aggrieved by that order Mr. Partha Pratim Roy, learned Counsel appearing on behalf of the petitioners submits that the defendants in their written statement have mentioned the deeds no. as 1731 for the year 1962 and another deed no. 1968/13 which means that the later Deed is being numbered as 1968 and it was executed in the year 2013 and the deed no. and year mentioned in written statement tallies with the deed no. and year mentioned in the amendment application but the Court below under wrong impression rejected the prayer for amendment which is absolutely wrong and a perverse finding and as such impugned order is required to be interfered by this Court invoking jurisdiction under Article 227 of the Constitution of India.

Mr. Mrinmay Bhattacharyya, learned Counsel appearing on behalf of the opposite party No. 1 raised objection contending that plaintiffs want to incorporate the prayer for cancellations of the deed which was executed long back in the year 1962 and 2013 by filing amendment application in the year 2018 and accordingly plaintiffs'

aforesaid prayer for cancellation of the deeds are barred by limitation and the Court below was very much justified in rejecting the prayer for amendment. Moreover, the plaintiffs have not disclosed in their plaint about the acquisition of their Title in the suit property. Accordingly, he submits that the order impugned does not call for any interference by this Court.

I have considered the submissions made by both the parties. It is true that the plaintiffs by way of amendment of plaint sought to incorporate the prayer that the deeds dated 12th March, 1962 and 25th March, 2013 are void and inoperative by filing amendment application on 30th May, 2018. But it is the specific case of the plaintiffs that they got the information about the execution of the said deeds when the defendants filed written statement in the aforesaid suit and prior to that they had no knowledge about the execution of the said deeds. Though, said contention has been denied by the defendants/opposite parties herein.

In view of the aforesaid respective contentions, it appears that the issue as to whether the aforesaid prayer for cancellation of the aforesaid two deeds is barred by limitation or not involves mixed question of law and fact which involves fair question of trial.

Since both the parties are claiming right, title and

possession over the suit property and since the defendants have come up with a specific case that they have acquired title by way of registered deeds and the plaintiffs also claiming title have sought to cancel that said deeds are void deeds, it appears that the proposed amendment is required for effective and conclusive adjudication of the suit for determination of right title interest in the suit property and moreover if the question as to whether the aforesaid prayer for cancellation of the deeds is barred by limitation or not is kept open for final adjudication of the suit, the defendants / opposite parties herein will have no cause to prejudice.

In Pankaja Vs. Yellapa, reported in AIT 2004 SC 4102, Hon'ble Supreme Court held that if the granting of an amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the present suit if the proposed amendment is allowed the suit will remain a suit for declaration of plaintiff's title in the suit property and will not change nature or character of the suit.

In such view of the matter, the Court below was not justified in rejecting the prayer for amendment and as such it calls for interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

Accordingly the impugned order No. 21 dated 6th

August, 2019 is hereby set aside. The plaint is amended as per schedule of the petition for amendment. The plaintiffs will file amended plaint within a period of three weeks from date and if the amended plaint is filed, the Court below will give opportunity to the opposite parties to file additional written statement, if any, within a period of three weeks from the date of filing of the amended plaint by the plaintiffs.

It is further clarified that the issue as to whether the proposed prayer of the plaintiffs for cancellation of the aforesaid two deeds is barred by limitation or not shall be kept open to be adjudicated at the time of final adjudication and Court below will frame an additional issue on the point of limitation at the appropriate stage, if it has not been already framed.

Learned Court below is directed to make every endeavour to dispose of the aforesaid suit at the earliest, since the suit is pending for a considerable period of time.

The revisional application, being C.O. 1474 of 2020 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)