

5.4.2024
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Ct. no. 652
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CO 1653 of 2020

Jayanta Kumar Mondal & ors.
Vs.
Secretary, Purba Medinipur Zilla Parisad & Ors.

Mr. Aniruddha Chatterjee
Mr. Asif Sohail Tarafdar ...for the Petitioners

Mr. Uttam Kr. Bhattacharya
Mr. Kaustav Mishra
Mr. Bishal Bhattacharya
...for the O.P. nos. 1 & 2

An order dated 7th December, 2020 passed by the learned Civil Judge (Junior Division), 1st Court, Tamluk, in Title Suit no. 103 of 2020 is the subject matter of challenge in the present application.

The present petitioners as plaintiffs filed aforesaid suit against the present opposite parties and proforma opposite parties praying inter alia for a declaration that plaintiffs have right title and interest in respect of the “Ka” schedule property and the defendants should not be permitted to interfere with the construction work undertaken therein, in the absence of their right, title or interest and for permanent injunction to that effect along with other consequential reliefs. The defendants/opposite party nos. 1 and 2 entered appearance and filed written statement denying material allegations made therein.

During pendency of the application, the petitioners herein filed an application under Order VI rule 17 of the Code of Civil Procedure seeking amendment of the plaint. The principal defendants/opposite parties herein contested the said application by filing written objection. Learned court below by the impugned order, was pleased to allow the said prayer for amendment partly.

Being aggrieved by that order, Mr. Chatterjee on behalf of the petitioners submits that the court below while passed the order impugned, has not assigned any reasons as to why part of the prayer for amendment was disallowed and part of the amendment prayer was allowed, though in his findings, he observed that the proposed amendment ought to be allowed to prevent multiplicity of proceeding. It is also not clear from his order which portions of the amendment application were disallowed. Accordingly, the petitioners have prayed for setting aside the order impugned.

Learned counsel for the opposite parties raised strong objection contending that in the said suit, the petitioners had filed an injunction application under Order XXXIX rule 1 and 2 of the code restraining the opposite parties from interfering with the construction work undertaken by the petitioners in the suit property. After hearing both the parties, learned court below was pleased to pass an order restraining the

defendants/opposite parties from interfering with the raising of further construction in the “Ka” schedule property till a particular date. After hearing both the parties, learned court below was pleased to pass order no. 8 dated 10th September, 2020, thereby restraining contesting defendants from changing the nature and character of the suit property till disposal of the suit.

Being aggrieved and dissatisfied with the said order no. 8 dated 10th September, 2020, the defendant/opposite party nos. 1 and 2 herein as appellant, challenged the same by filing an appeal being Misc. appeal no. 10 of 2020 and leaned appellate court after hearing the parties, affirmed the order passed by the Trial court. However, while passing the said order, the learned appellate court opined that the said order would not debar the defendants/opposite parties herein from proceeding on the basis of notice issued by defendant nos. 1 and 2.

In view of aforesaid direction made by the learned appellate court, the proposed amendment which has been filed prior to the injunction application, has become redundant and by the said order plaintiffs are estopped to challenge the notice issued by defendant nos. 1 and 2 regarding their illegal construction by their proposed amendment. The order impugned is quite justified and was passed after considering all aspects of the matter and as such it does not call for interference

by this court. Accordingly, he prayed for dismissal of the present application.

I have considered the submissions made by both the parties. The court below after recording submissions of the parties, observed that the proposed amendment as sought for in the present application, is formal in nature and the said amendment is mere elucidation of fact, which could not be previously incorporated due to lack of knowledge. He finally observed that said amendment is essential for proper adjudication of the present dispute and also to avoid multiplicity of proceedings. So he noted that the proposed amendment of the instant suit may be allowed in part.

From the aforesaid observation of the court below, it is apparent that there is a contradiction in the operative portion of the order with the findings made by the court below in the body of the order. Moreover, according to court below insertion of certain names of persons, typographical errors can be amended as a result of which no new case would be made out by the proposed amendment but no reason has been assigned as to why the other part of amendment is liable to be disallowed and it caused perversity in the order impugned. The order is also indefinite and suffers from vagueness.

In such view of the matter, the order impugned being no. 11 dated 7th December, 2020 is hereby set

aside. Learned court below is directed to hear the said application for amendment of plaint afresh after giving opportunity to both the parties to contest and dispose of the same preferably within a period of eight weeks from the date of communication of the order without being influenced by any observations made herein.

C.O. 1653 of 2020 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)