

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 1072 of 2021

Sahena Bibi & Anr.
Vs.
Nurul Huda Sarkar & Ors.

Mr. Sounak Bhattacharya
Mr. Asif Dewan
... For the petitioners

Mr. Partha Pratim Roy
Ms. Poulami Chakraborty
Mr. Samrat Chakraborty
... For the opposite parties

1. This revisional application has been preferred assailing the order dated 6th December, 2019 passed in connection with Partition Suit No.99 of 2019 wherein the learned Civil Judge (Senior Division), Lalbagh, Murshidabad, rejected an application for amendment proposed to be incorporated by an application dated 3rd September, 2019. Learned Trial Judge recorded his finding which runs as follows:-

“Now, the plaintiff by way of this amendment wants to incorporate the fact challenging the deed dated 22.11.1965 executed by Nurjahan in favour of defendant No.1. I further find that during the life time of Nurjahan the said deed dated 22.11.1965 was never challenged neither by Nurjahan nor by her legal heirs. Plaintiffs are not the legal heirs of Nurjahan and being a third party he has no locus standi to challenge the said gift deed executed by Nurjahan after 54 years of execution. Moreover, such proposed amendment would destroy the

defence already taken by the defendants and the defendants will be highly prejudiced. I further find that this amendment petition was filed almost after one year from the date of filing W/s by defendant No.1. Thus, I find that this amendment petition is liable to be rejected for the reason discussed above.”

2. Learned counsel appearing on behalf of the petitioners has submitted that the order assailed in this revisional application is not at all sustainable in law as the proposed amendment is absolutely required for proper adjudication of the issue which emerged after filing of the written statement on behalf of the defendants/opposite parties herein.

3. On the other hand, learned counsel appearing on behalf of the opposite parties has contended that the learned Judge rightly recorded his finding that the petitioners had no *locus standi* to file the suit as they are connected with Nur Jahan Bibi who allegedly executed one deed on 22nd November, 1965 in favour of the defendant no.1/opposite party no.1 herein.

4. As it appears from the record that after filing of the suit in respect of the property mentioned in the schedule, defendants/opposite parties herein entered appearance by filing written statement contending, inter alia, that Nur Jahan Bibi obtained the portion of the subject property by way of succession and transferred the same in favour of the defendant no.1/opposite party no.1 herein.

5. After filing of the written statement, plaintiffs filed an application under Order VI Rule 17 of the Code of Civil Procedure with a proposed amendment of plaint incorporating the fact of forgery by false personification. It is stated in the proposed amendment that Nur Jahan Bibi never executed any deed on 22nd November, 1965 in favour of the defendant no.1/opposite party no.1 herein.

6. This issue of execution of the deed dated 22nd November, 1965, in my opinion, requires to be adjudicated in course of trial after giving opportunity of hearing to the parties. It is not disputed that trial of the suit has not yet commenced. Therefore, the issue in controversy here is whether the deed dated 22nd November, 1965 was actually executed by Nur Jahan Bibi or not.

7. For that reason, the proposed amendment is required to be incorporated in the plaint.

8. Regard being had to the above, I am not agreeable with the learned Trial Judge and as a sequel, the order impugned dated 6th December, 2019 stands set aside.

9. The proposed amendment by way of an application dated 3rd September, 2019 under Order VI Rule 17 of the Code of Civil Procedure stands allowed.

10. Petitioners are directed to file amended plaint within two weeks and the defendants/opposite parties herein

are also given liberty to file additional written statement, if any, to the effect of proposed amendment.

11. With the above observation, the revisional application stands disposed of.

12. Learned counsel appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Trial Court, forthwith.

13. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)