

09.01.2025
Item No.
AD 1
Saswata

**C.O. 2128 of 2024
CAN 1 of 2024**

**Arun Kumar Dutta
versus
Barun Kumar Dutta**

Mr. Soumya Banerjee
Ms. Sucheta Banerjee

...For the petitioner

Mr. Souvick Mitra
Mr. S. Dutta

...For the opposite party

1. Challenging the order no. 28 dated 16th April 2024 passed by the Learned 12th Bench, City Civil Court at Calcutta in Title Suit no. 572 of 2018, whereby the defendant/petitioner's application for amendment had been disallowed, the instant revisional application has been filed.
2. It is submitted that the defendant/petitioner and the plaintiff / opposite party are brothers and the suit is for partition between the two brothers. According to the defendant/petitioner although he has been contesting the suit by filing written statement, in the year 2022 the defendant/petitioner having ascertained that by an indenture deed dated 28th September 1988, one Kashinath Dutta had sold and / or transferred 42 sq. feet of land with construction thereon forming a portion of Lot "C" of the partition plan annexed to the will of Late Manindra Bhusan Dutta, the grandfather of the parties, in favour of the Adinath Dutta, the deceased father of the parties to the suit, which document is duly registered with the Sub-Registrar, Registrar of Assurance, the factum thereof was sought to be incorporated by way of an amendment application filed on 12th May 2022.

3. Mr. Banerjee, learned advocate appearing in support of the aforesaid revisional application would submit that unfortunately the application filed by the defendant/petitioner did not elaborately enlighten the Court as regards the factum of the defendant/petitioner's acquiring subsequent knowledge with regard to transfer of 42 sq. feet of land as aforesaid. Though, the trial in the suit was yet to be commenced, the Learned Judge had rejected the same by indicating that the prayers are to be agitated at the time of trial by filing documents and by cross examination. It is further submitted that ordinarily pleading form basis for leading an evidence. In absence of the pleadings, the defendant/petitioner shall not be in a position to appropriately establish the factum of sale of 42 sq. feet of land unto and in favour of the defendant/petitioner's father, Adinath Dutta, so as to bring the same in the hotchpot of partition. This would also result in the suit schedule property being altered. Having regard thereto, unless the aforesaid amendment is allowed, the parties to the partition suit shall suffer irreparable loss and injury.
4. Mr. Mitra, learned advocate appearing for the plaintiff / opposite party would submit that although, the amendment may be necessary, to give a clear picture and to appropriately identify the suit schedule property, yet it cannot be disputed that the defendant / petitioner had delayed filing of such application despite being aware with regard to the factum of execution of the title deed unto and in favour of the his father. Having regard thereto he submits that the plaintiff/opposite party should be appropriately compensated for the delay.
5. Having heard the learned advocates appearing for the respective parties and considering the fact that the

aforesaid amendment would not only elucidate the real controversy in issue between the parties and morefully identify the suit schedule property and also would aid the Court in passing a decree in the partition suit, I am of the view that the aforesaid amendment should be allowed.

6. However, at the same time the fact that the defendant/petitioner had delayed in taking out the amendment application cannot be lost sight of. Consequently subject to payment of costs of Rs.5000/ to be paid to the plaintiff/opposite party, by the petitioner, the amendment application filed by the defendant/petitioner on 12th May 2022 is allowed and the order dated 16th April 2024 is set aside. The petitioner is directed to file amended written statement before the Trial Court within three weeks from the date.
7. With the above direction and observation, C.O. 2128 of 2024 along with its connected application being CAN 1 of 2024 is accordingly disposed of.
8. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)