

Ct.
No.
29
170
Bd

02.05
2025

C.O. 3752 of 2024

Sri Rabindra Nath Sarkar
-Vs-
Smt. Laxmi Rani Karmakar

Mr. Somnath Roy Chowdhury
Mr. Ranajit Roy ... for the petitioner.

In spite of service opposite party is not represented.

Petitioner herein being aggrieved by the order dated 13th September, 2024 passed by learned Civil Judge (Junior Division) 5th Court, Alipore, South 24 Parganas in Title Suit No. 3 of 2015, has preferred the instant application. By the order impugned learned court below allowed the plaintiff's prayer for amendment of the plaint to incorporate the prayer for recovery of possession stating that during pendency of the suit the defendant, being an influential person in the locality forcibly entered into the suit property on 25.06.2016 and started construction thereon in spite of resistance made by the plaintiff and he sought to incorporate a prayer for passing decree for recovery of possession of the suit property described in the schedule to the plaint by evicting the defendant.

Being aggrieved by the order impugned learned counsel appearing on behalf of the petitioner submits that the plaint of the suit was filed on 17th January, 2015 and in paragraph 8 of plaint plaintiff stated that the defendant /petitioner herein is the trespasser and/or intruder in respect of the suit property.

He further submits that the trial court in that suit initially passed an order of injunction in favour of the plaintiff and being aggrieved by that order of injunction defendant herein preferred Misc. Appeal before the Appellate Court and the Appellate Court observed in it's order dated 14.06.2016 in Misc. Appeal No. 55 of 2016 as follows:-

“Admittedly the defendant is in possession over the land in question on which mutation, conversion of land and sanction of building plan have been granted in favour of the defendant and as such the balance of convenience is in favour of the defendant and against the plaintiff.”

Learned counsel for the petitioner further submits that being aggrieved by that order dated 14th June, 2016 the plaintiff/opposite party herein preferred revisional application before this High Court and High Court affirmed the order of the appellate court below regarding vacating of

injunction order.

Accordingly, petitioner submits that if the proposed amendment is allowed it will amount to withdrawal of clear admission made by the opposite party/plaintiff in his plaint.

He further submits that the order dated 27th February, 2017 clearly demonstrates that the issues have already been framed and the suit is posted for peremptory hearing. Since the trial has already been commenced, the proposed amendment cannot be allowed without proper explanation of causing delay. He further submits that the suit was filed in the year 2015 and the dispossession sought to be incorporated, allegedly took place on 25th June, 2016 but the prayer for amendment was made on 13.04.2017, as such plaintiff has not disclosed in his petition for amendment of plaint as to what prevented him from making prayer for amendment earlier.

Accordingly, he prayed for setting aside the order impugned. Petitioner in this context relied upon the judgment of ***Life Insurance Corporation of India -vs- Sanjeev Builders Private Limited & Anr.*** reported in ***(2022) 16***

SCC and Vidyabai & Ors. –vs- Padmalatha & Anr. reported in **2009 (1) Supreme 238.**

I have considered the submissions made by the petitioner. It appears in view of the plaintiff's pleading as well as the observation made by the appellate court that the defendant's possession in the suit property at least as a trespasser/intruder at the relevant time of filing the suit is admitted by the plaintiff.

In **Life Insurance Corporation of India** (supra) the Court clearly held that the amendment generally can be allowed to avoid multiplicity of proceedings provided:

- (a) *the amendment does not result in injustice to the other side,*
- (b) *by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and*
- (c) *the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right.*

Having considered the facts and circumstances of the case, it appears that the application for amendment of the plaint is not only belated but also not bona fide and if allowed, would change the nature and character of the suit and it would lead to a travesty of justice in as much the Court would be allowing plaintiff to

withdraw their admission that at the time of filing the suit on 17.01.2015 the defendant was a trespasser/intruder in respect of suit property and would amount to incorporate a new case that during pendency of the suit, only on 25.06.2016 defendant forcibly trespassed in the suit property. Moreover, it is settled law that leave to amend will be refused, if it introduces a totally different, new and inconsistent case or challenges the fundamental character of the suit.

In such view of the matter, order impugned is not sustainable and if allowed would cause serious prejudice to defendant and therefore liable to be set aside.

C.O. 3752 of 2024 thus stands allowed.

The impugned order dated 13th September, 2024 passed by learned Civil Judge (Junior Division) 5th Court, Alipore, South 24 Parganas in Title Suit no. 03 of 2015 is hereby set aside.

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

(Dr. Ajoy Kumar Mukherjee, J.)