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C.O. 3868 of 2024

Narayan Mandal @ Narayan Chandra Mandal
Vs.
Ramesh Chandra Mandal & Ors.

Mr. Probal Kumar Mukherjee
Ms. Shebatee Datta **...For the Petitioner**

Affidavit-of-service filed on behalf of the petitioner is taken on record. Opposite parties are not represented.

Petitioners contention is that the opposite party Nos. 1-8 herein as plaintiffs filed a partition suit in the year 1967, being partition suit No. 84 of 1967. That suit was decreed in preliminary form on contest against defendant Nos. 1 and 2 and ex parte against the rest on 18th February, 1970.

Being aggrieved and dis-satisfied with the said judgment and order, an appeal was preferred before this Court, being F.A. 497 of 1970. As the issue raised in the appeal that all the joint properties of the parties have not been brought in common hotch pot, while disposing of the said first appeal, this Hon'ble Court by an order dated 26th September, 2019 allowed the appeal and remanded the case before the Trial Judge for retrial. By the said judgment, this High Court also granted liberty to the plaintiff to apply for amendment of the plaint for including all the joint properties of the parties in the suit and upon such prayer being made,

the Trial Court was directed to consider and dispose of such proposed amendment application accordingly. It was further stipulated in the said order that if the plaintiff declines to have a partition of the entire joint property, the suit will stand dismissed. However in the event the plaintiff takes steps to have partition of the entire joint estate by way of amendment of the plaint, the learned Trial Judge shall dispose of the suit after affording the parties an opportunity to lead further evidence.

Thereafter, the plaintiff simultaneously filed a an application under Order VI Rule 17 of the Code of Civil Procedure (CPC) for amendment of the plaint where he sought for inclusion of one plot, being No. 1677 as joint properties in the suit and also filed an application under Order 11, Rule 1 of the CPC praying for a direction upon the defendants to furnish particulars regarding any other joint properties of the parties.

The petitioner herein, being defendant No. 14 in answer to the interrogatories under Order 11, Rule 8 of the CPC filed schedule of properties mentioned in the application dated 20th July, 2024 where he has incorporated various joint properties of the parties. However, the plaintiff/opposite parties herein by an application dated 26.9.2014 the Court that they have amended the plaint in

terms of the direction of the Hon'ble High Court. However, if the defendants inform about any other joint properties supported by document then they would again amend the plaint to incorporate such joint properties.

Mr. Probal Kumar Mukherjee, learned Senior Counsel appearing on behalf of the petitioners submits that after such amendment of plaint by the Trial Court, unless they get an opportunity to file additional written statement, it would cause prejudice to them as they will not get the opportunity to pray for incorporation of the rest joint properties, backed by documents.

Having heard learned Counsel appearing on behalf of the petitioner, I find that the prayer made by the petitioner is not only innocuous but also justified and is required to be allowed for the ends of justice and as such the liberty is given to the petitioner herein/defendant No. 14 to file additional written statement, if any, within a period of four weeks from date. However, this order will not preclude the plaintiff to make further amendment application, if required, for ends of justice, in view of defendants additional written statement or for otherwise.

The revisional application, being C.O. 3868 of 2024 is accordingly disposed of.

Urgent Photostat certified copy of this order, if

applied for, be given to the parties, on priority basis upon compliance of requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)