

Civil Revision

**Present : The Hon'ble Justice Harish Tandon.
Judgment on : 06.10.2010**

C.O. No. 2150 of 2007.

**Prakash chandra Pradhan & Anr.
-vs-
Shyama Pada Maity & Ors.**

Point:

AMENDMENT OF PLAINT: By proposed amendment the opposite parties disputing certain recitals made in the deed, the foundation whereof is already laid in the plaint- Such amendment will neither change the nature and character of the suit -Whether such amendment should be allowed- Code of Civil Procedure,1908 O 6 R 17

Facts:

The opposite parties filed the said suit against the petitioners seeking for partition and a decree for permanent injunction. Such suit is contested by the petitioners by filing the written statement. The opposite parties thereafter took out an application for amendment of the plaint, seeking to incorporate certain facts which are necessary for proper and effective adjudication of the dispute involved in the said suit. The said application for amendment was contested by the petitioner on the ground that the same is barred by limitation and a new and inconsistent case is made out. The said application was dismissed. The opposite party thereafter filed an application under section 151 of the Code of Civil Procedure for recalling the said order for reconsideration of the said

application for amendment afresh. The said application was eventually allowed. Hence this application.

Held:

There is a foundational fact as to the inheritance by the opposite parties from their ancestors. The opposite parties have averred that the deed dated October 1, 1996, in totality, is not valid and legal. It is further averred that Chandan Kumar Metta had an interest in respect of the land to the extend of 4.18 decimal which he at best be competent to convey by executing a deed to the petitioners. By a proposed amendment, the opposite parties are not denying such fact but they are disputing certain recitals made in the said deed, the foundation whereof is already laid in the plaint. Such amendment will neither change the nature and character of the suit nor make out a new and inconsistent case. By the proposed amendment the opposite parties are not intending to withdraw the admission made in the original plaint.

Paras 8 & 9

For the petitioner : Mr. Aniruddha chatterjee
Mr. Sourav Chowdhury
Mr. K. Shah

For the Opposite Party : Mr. Suprabhat Bhattacharya
Mr. Kanailal Samanta

The Court:

This revisional application is directed against an order no. 71 dated March 28, 2007 passed by the Civil Judge (Senior Division) Tamluk, District – Purba Medinipur in Title Suit No. 81 of 1997.

2. The opposite parties filed the said suit against the petitioners seeking for partition and a decree for permanent injunction.

3. Such suit is contested by the petitioners by filing the written statement. The opposite parties thereafter took out an application for amendment of the plaint, seeking to incorporate certain facts which are necessary for proper and effective adjudication of the dispute involved in the said suit. The said application for amendment was contested by the petitioner on the ground that the same is barred by limitation and a new and inconsistent case is made out.

4. The said application was dismissed on June 15, 2006. The opposite party thereafter filed an application under section 151 of the Code of Civil Procedure for recalling the said order dated June 15, 2006 for reconsideration of the said application for amendment afresh. The said application was eventually allowed.

5. By an impugned order the trial court allowed the said application for amendment holding that by the proposed amendment the share as claimed would not be changed and in order to adjudicate the dispute in a proper and effective manner such amendment is necessary.

6. The learned Advocate appearing for the petitioner assailed the said order only on the ground that there is an admission on the part of the opposite parties in the plaint which is sought to be withdrawn by the proposed amendment. It is further contended that such an amendment is not permissible which has an impact of withdrawal of an admission.

7. The opposite parties contend that the proposed amendment merely elucidates the fact already pleaded in the plaint and by such proposed amendment there is no withdrawal of an admission.

8. Having considered the submissions of the respective parties, on bare reading of the plaint in find that there is a foundational fact as to the inheritance by the opposite parties from their ancestors. The opposite parties have averred that the deed dated October 1, 1996, in totality, is not valid and legal. It is further averred that Chandan Kumar Metta had an interest in respect of the land to the extend of 4.18 decimal which he at best be competent to convey by executing a deed to the petitioners. By a proposed amendment, the opposite parties are not denying such fact but they are disputing certain recitals made in the said deed, the foundation whereof is already laid in the plaint. Such amendment will neither change the nature and character of the suit nor make out a new and inconsistent case.

9. I do not find that by proposed amendment the opposite parties are intending to withdraw the admission made in the original plaint. Such submission of the petitioner has no basis. I do not find any illegality in the impugned order calling for an interference under Article 227 of the Constitution of India by this court.

10. In result, the revisional application is dismissed.

However, there shall be no order as to costs.

(Harish Tandon, J.)