

Title Appeal – 41 of 2017
C.N.R. No.WBBB05-000393-2017

28

23-02-2023

The appellants file hazira. Today is fixed for ex parte hearing of the appeal. When the case is taken up for hearing, Ld. Counsel for the appellants has submitted that two petitions are still pending ; one for amendment of plaint and the other for recording additional evidence. The petition for amendment of plaint is taken up for consideration at the foremost.

According to the Ld. Counsel for the appellants, inadvertently the share of Sabitri Mondal, one of the heirs of predecessors-in-interest of the plaintiffs of the original suit, was not taken into consideration while filing the plaint. Further two deeds of sale dated 19-01-2011 and 01-06-2015, whereby parts of the suit property changed hands, were not disclosed in the plaint. In order to rectify those anomalies and for fair adjudication, instant prayer has been made to amend the plaint incorporating therein the aforementioned facts.

I have gone through the materials on record. As per the plaint, the plaintiff no.1 is the full brother of Sabitri Mondal and therefore, while making a claim in respect of the property inherited by him from his father, he should not have ignored the share of Sabitri Mondal. Furthermore, the deed dated 19-01-2011 was executed by plaintiff no.1 in favour of plaintiff no.2 whereby plaintiff no.1 transferred his share in the suit property in favour of plaintiff no.2. This deed of sale was executed within six months of institution of the suit, the decree of which is under challenge herein by the plaintiffs with changed nomenclature of appellants. It is amazing to see that the plaintiffs did not consider it necessary to bring it to the notice of Ld. Court below that *lis pendence* they transferred parts of the suit property which ultimately led to wrong calculation of share by Ld. Court below. No explanation is sufficient to ratify a wrong committed by the plaintiffs during the pendency of the suit when they kept Ld. Court below in dark. By no means they can claim that they exercised due diligence in bringing the petition praying for amendment of plaint. The petition praying for amendment of plaint is not only filed at much beyond right time but also, if allowed, will allow abuse of the process of law at the hand of the appellants. In such view of the matter, the petition praying for amendment of plaint is rejected downright.

Hence, it is

ORDERED

that the petition praying for amendment of plaint is rejected ex parte without any order as to costs.

Fix : **26-06-2023** – for hearing of petition under Order 41 Rule 27 of C.P.C.

D/C

Sd/-
Subrata Chatterjee
Addl. District Judge.
F.T.C. - Rampurhat

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Addl. District Judge.
F.T.C. - Rampurhat
J.O. Code – WB 00826