

S/L. 7.
22.08.2019
MNS

***Calcutta* High Court**
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction

C. O. No. 37 of 2019

Jalpaiguri Municipality
Vs.
Sri Hari Prasad Sarma and others

Mr. Tapas Bhattacharya,
Mr. Dipankar Sen

...for the petitioner.

Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh

...for the State.

Mr. Biswajit Basu

...for the opposite party no. 1.

Mr. Hiren Guha Thakurta

...for the proforma opposite
party nos. 8 and 9.

Affidavit-of-service filed in court today
be taken on record.

The plaintiff-opposite party no. 1, as
well as the State, being the opposite party no.

6, and the proforma opposite party nos. 8 and 9, are represented in court today.

Service is complete on the opposite party nos. 2 to 5 in view of the endorsement “refusal” on the service report.

Apart from proforma opposite party nos. 8 and 9, service on the rest of the proforma opposite parties is dispensed with.

The present application under Article 227 of the Constitution of India is filed at the instance of a defendant in a suit for declaration of title of the plaintiffs, a declaration that the settlement record was wrong and was not binding on the plaintiffs and for perpetual injunction restraining the defendants from entering into the suit land described in the schedule- B thereof.

By virtue of the impugned order, an application for amendment of plaint, filed in the year 2017, was allowed.

Learned counsel for the petitioner submits, by placing reliance on a previous order of the court below dated November 19, 2018, that the trial court categorically held

therein that the petitioner had filed the amendment petition without any reasonable cause for the delay in filing the amendment application after commencement of the trial. Thus, unless and until there was an explanation of delay in filing such amendment, the petition under Order VI Rule 17, after commencement of trial, the court would not pass any order for amendment of the plaint. The next date was fixed as January 25, 2019 for filing of explanation by the petitioner for the delay.

However, by the next order (the present impugned order) dated January 25, 2019, the trial court allowed the said amendment application on a mere verbal submission made on behalf of the plaintiffs that, due to change of counsel, the delay was occasioned. Such explanation was accepted by the court and it was observed that the amendment, if allowed, would not change the nature and character of the suit and it was also necessary to determine the actual

controversy between the parties and to avoid multiplicity of litigation.

Learned counsel appearing for the opposite party no. 1, who is one of the plaintiffs, submits that limitation applies only to pre-suit events, if sought to be brought in by way of amendment. However, it is submitted that the principles of limitation are not applicable to subsequent post-suit events.

Learned counsel for the opposite party no. 1 further submits that the proviso to the amended Order VI Rule 17 of the Code of Civil Procedure is not at all applicable to the present case, in view of the suit having been filed in the year 1985, much prior to coming into force of the relevant amendment to the Code.

As far as the contention of the opposite party no. 1, that the proviso to Order VI Rule 17 of the Code is not applicable, this Court is in agreement with such contention, since the suit was filed prior to the commencement of the relevant amendment to the Code and as

such, the amended proviso is not applicable at all to the present case.

Therefore, although the order dated November 19, 2018 is not specifically challenged by the opposite parties, this Court is of the opinion that the observations made therein could not be binding on the plaintiffs, since those observations were patently erroneous on law.

However, there is another sticking point in the amendment being allowed. As rightly pointed out by learned counsel for the petitioner, as well as the State/opposite party no. 6 and proforma opposite party nos. 8 and 9, the amendment primarily sought was to get a relief of mandatory injunction on the basis of the events which allegedly occurred on December 10, 2004.

If a suit was filed today for mandatory injunction and eviction, as sought to be introduced by the amendment, the same would be palpably time-barred. It is well-settled that a litigant cannot indirectly obtain

a relief, which he was debarred from getting directly.

As such, since, on the face of it, the relief sought was time barred in view of thirteen years having elapsed between the occurrence of the cause of action and the seeking of the relief by amendment, the court below acted without jurisdiction in allowing such amendment.

As far as the alternative relief claimed, the same also pertains to the alleged cause of action dated December 10, 2004 and the same logic applies in disallowing such relief, as attributed to rejection of the relief for mandatory injunction and eviction.

Accordingly, C. O. No. 37 of 2019 is allowed, thereby setting aside the impugned order and rejecting the application for amendment. If any amended plaint has been filed in the meantime pursuant to the impugned order, the same shall stand expunged from the records.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)