

C.O. 857 of 2021

Subhod Chandra Dey

-VS-

Matlab Bouri

Mr. Moni Sankar Chattopadhyay
Mr. Souvaghya Chatterjee

...For the petitioner

Being aggrieved and dissatisfied with the order of rejection of amendment petition in Title Suit No. 38 of 2012 passed by the learned Civil Judge (Junior Division), Raghunathpur on 01.03.2021, the plaintiff/petitioner has filed the instant revisional application.

The facts which is necessary for disposal of the present revisional application in gist is that the plaintiff/present petitioner has purchased 25 decimals land described in the schedule of the plaint within specific boundary from the defendant/opposite party on the strength of a registered Deed of Sale dated 16.03.1993. But, suddenly the defendant forcibly tried to take possession of the scheduled property on 05.05.2012 alleging that he never sold the scheduled property to the plaintiff.

After causing enquiry on the assertion made by the

defendant, the plaintiff came to know the defendant by supplying wrong record of rights to the Deed Writer, wrong plots nos.189, 191, 193, 188, 192, 190, 194 and 195 have been incorporated in the sale deed instead of actual plot nos. 214, 215 and 216, the possession of which was delivered to the plaintiff.

The plaintiff has alleged that since the date of purchase and till date he is in possession of the property which actually falls in the R.S. Plot Nos.214, 215 and 216 by erecting pillars for boundary wall and not the one described in his deed. Therefore, by filing the Title Suit No.38 of 2012 he has claimed declaration of his right, title and interest over the land appertaining to R.S. Plot Nos.214, 215 and 216 within specific boundary and for consequential relief.

Now, by filing the impugned amendment petition, the plaintiff has prayed for rectification in the schedule of his purchase deed by incorporating the actual plot numbers, of 25 decimal lands, the possession of which was delivered to him by his vendor /the defendant within specific boundary.

The Court below while rejecting the amendment petition filed by the plaintiff and by passing impugned order has taken the view plaintiff wanted to fill up the lacuna appearing in his plaint by way of amendment and which cannot be allowed

Let see whether learned court below is justified in

rejecting the proposed amendment of the plaint?

The background of the case discussed above prima facie shows that some kind of fraud has been practiced on the plaintiff a bona-fide purchaser for value by his own vendor by incorporating wrong plots number in the deed, and delivering possession of lands of some other plots and not of those written in the deed. That taking advantage of such wrong recording the vendor fifteen years later tried to disrupt the possession of the land sold by him.

For the sake of argument if we assume the defendant did not sell or delivered possession of the property described in the schedule of the plaint to the plaintiff, but the land described in the schedule of the sale deed, then I do not find any documents being filed by the defendant before the learned court below when the suit was earlier taken for hearing on the point of maintainability, to prove that he was owner of the land of plot numbers mentioned in the deed of the plaintiff executed by him and which he sold and given possession and not the land described in the schedule of the plaint.

If the defendant had been a honest sellers then he could have prayed for local investigation of the schedule property to show that boundary of the land described in deed of the plaintiff does not fall within the schedule of land mentioned in the plaint.

It is well known fact that advocate commissioner who is

not a survey passed commissioner and who is merely appointed to hold local inspection cannot ascertain the plot number of a land from his eye estimation. To ascertain the plot number of a land one need the help of an expert a survey passed commissioner or engineer and who too cannot ascertain the actual plot number of a land without mouza map, record of rights or deeds, if any, of the parties, Gunther chain or measuring devices, compass, poles, tripods and prisms etc. if it is done in traditional way or such expert can ascertain the plot number by theodolite survey. With advancement in technology survey of a land can be done by adopting modern electronic gadgets, but has to be done only by an expert.

Be that as it may, perused the proposed amendment and the plaint of the plaintiff. In the plaint the plaintiff has invariably mentioned that in his deed wrong plots number have been mentioned instead of the land possession of which was given to him by the defendant. Though he has stated that classification and boundary mentioned in the disputed deed is correct. That he has prayed for rectification of plots number in his deed by filing the amendment petition.

The facts which the plaintiff wants to bring on record by way of amendment do not appear to be new facts or facts to fill up the lacuna in his plaint. Rather, I find nexus between the proposed amendment with the facts which has

been already pleaded in the plaint.

Further, this court holds the proposed amendment is necessary for determining real controversy between parties regarding the deed which is the root cause of the dispute and if the proposed amendment is allowed it is not likely to prejudice the interest of the defendant the executor of the deed. That seeking an essential relief for determination of lis by way of amendment is not likely to constitute new cause of action as the plaintiff has invariably stated in the plaint about wrong plot numbers being mentioned in the deed executed by the defendant in his favour.

Further, this court is of view the proposed amendment is necessary and essential for adjudication of the dispute between a bona fide purchaser who purchased the property on considerable value in the year 1993 on the strength of a registered Deed and the defendant vendor who sold the property by showing wrong plot numbers to the plaintiff/petitioner and now threatening with dispossession. In fact if the proposed amendment is not allowed then it may result possibly in failure of justice.

Accordingly, the proposed amendment is allowed for administration of justice and to prevent obvious failure of justice.

The impugned order is set aside.

The plaintiff/petitioner is directed to file amended copy

of the plaint in the Court below within 1st Week of January, 2022. The defendant is at liberty to file additional written statement, if any, against the amended plaint.

Accordingly, the revisional application being **C.O. 857 of 2021** is allowed and connected application, if any is disposed of.

Interim order, if any stands discharged.

There will be no order as to costs.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)