

C.O. 2029 of 2021

Sambhu Prasad Agarwal & Ors.

Versus

Sitaram Goenka

(Via Video Conference)

Mr. Shubham Gupta
...for the Petitioners

Mr. Om Narayan Rai,
Mr. B. Singh
...for the Opposite Party

This revisional application has been filed by the defendants assailing the order passed by Learned Judge 3rd Bench Presidency Small Causes Court in Ejectment Suit No.579 of 2016 on 17.09.2021 and whereby the Learned court below has been pleased to allow the amendment petition filed by the plaintiff.

Learned lawyer for the petitioners/ defendants/ tenants, contended the learned court below by allowing the amendment in the plaint has virtually empowered/vested itself to hear a declaratory suit over which it has no jurisdiction in view of Section 19 of The Presidency Small Cause Courts Act, 1882. Therefore, he urged the impugned order being illegal be set aside.

It has been contended by learned advocate for the opposite party that the plaintiff/opposite party has filed a suit for eviction of the defendants from the tenanted premises in 2016. Kanhaiyalal, father of the petitioners

was the original tenant. He died leaving behind widow wife and four sons on 01.04.2010 . The widow of the original tenant too died on 19.06.2020 and a son named Laxmi Narayan died on 07.08.2020. That as per Tenancy Act, the tenancy right cannot devolves upon the sons of the original tenant and at present the petitioners are occupying the disputed tenancy as trespassers. By proposed amendment the plaintiff has prayed for declaration the present petitioners are occupying the disputed tenancy as trespassers. The plaintiff has also filed another petition under order 10 rule 7 of CPC, for return of the plaint after affecting amendment in the plaint for presenting the same before the proper forum as the original court has no jurisdiction to hear declaratory suit.

He further contended that without effecting necessary amendment in the original plaint and without incorporating the actual relief claimed by the plaintiff in plaint, the Court in which the plaint will be presented after return may not accept the plaint for lack of jurisdiction as power to hear ejectment suit within metropolitan area is vested with Presidency Small Cause Court and un-amended plaint does not contain any declaratory relief.

He in support of his contention referred to following decisions:-

1) In Vivekananda Nidhi and others vs Smt. Ashima

Goswami reported in 1997 SCC Online Cal 54.

2) Mohammad Jebbas Ali & Ors. vs Rahima Bibi reported in 1983 SCC Online Cal 68.

3)Hiralal Shaw vs Ganga Shaw & Ors.

4) Sushil Kumar Agarwal vs Ajay Kumar Saraff and Another reported in 2019 SCC Online Cal 1222.

Gone through the above cited decisions and in Mohd. Jeeves Ali (supra) Hon'ble Division Bench of this Court has been pleased to hold:-

1) When an application for amendment of the plaint is made which if granted will deprive the Court's jurisdiction to decide on merits, the court ought to dismiss the application. No Court will permit a plaint to be so amended as to oust its own jurisdiction to try the suit vide the decision of Venkatasubba Rao,J. In C. Singara v. M. Gobind Swami, AIR 1928 Mad 400.

2) When the court is faced with the question of allowing an amendment which taken together with the original claim exceeds its jurisdiction it should return the plaint together with the application of a amendment of consideration by the Court having jurisdiction to entertain the claim which is proposed to be made by amendment of the plaint.

3) When the claim as originally made is within the court's jurisdiction but if the said claim is amended, the Court might have no further jurisdiction, the said Court itself is competent to allow such amendment. Thereafter,

it would decide whether the amended plaint should be returned for presentation to the proper Court.

Further it has been held to ensure proper administration of justice amendment in pleadings should be allowed to shorten the time rather than delay fair disposal of the case. In case, upon the pleadings originally made the Court has competence to try the cause, the said Court ought to consider the application for the amendment of the plaint even when proposed amendment might affect Court's jurisdiction to further try the suit.

Such view has been followed by Hon'ble High Court of Calcutta in Vivekananda Nidhi (supra).

In the light of the observations of this Hon'ble High Court in the above discussed decisions, this court does not find any illegality and irregularity in the impugned order as learned Court below before entertaining the application under Order 7 rule 10 CPC filed by the plaintiff for return of the plaint for filing before the proper forum has rightly allowed the amendment petition to vest jurisdiction to the Court which has jurisdiction to try declaratory suit.

This court does not find any reason to interfere with order impugned. The revisional application is dismissed.

Accordingly C.O. 2029 of 2021 is disposed of.

Connected application, if any, stands disposed of.

Interim order, if any, stands discharged.

In view of the order made above affidavits are not invited. Allegations made shall be deemed be denied.

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.)