

S/L 13
06.04.2021
Court. No. 19
GB

C.O. 3556 of 2019

Serajul Alam Mondal & Ors.

Vs.

Hafiza Bibi & Ors.

(Through Video Conference)

Md. Sofiulla Mondal

...for the Petitioners.

This revisional application has been filed challenging the order dated July 19, 2019 passed by the learned District Judge, Hooghly in Civil Revision No.04 of 2019 as also the order dated February 22, 2019 passed by the learned Civil Judge (Junior Division), 2nd Court at Hooghly.

In a suit for declaration of title and injunction the plaintiffs claiming to be the absolute owners along with the proforma opposite party filed an application for amendment to incorporate a challenge to a sale deed dated April 19, 1954. The application for amendment was rejected by the learned Trial Judge.

Being aggrieved by the order of the learned trial judge a civil revision was preferred before the learned District Judge which was rejected on the ground of lack of jurisdiction and also merits. The learned Judge ought not to have gone into the merits. However this court takes up the order of the learned trial Judge on merits for consideration.

The application for amendment was filed on February 6, 2019 for incorporating the following:-

“Schedule of Proposed Amendment

At the end of para 3 of the plaint the following portion will add.-

“That the defendants are claiming that Abdul Aziz was the sole heir of his fathar Abdul Rahaman. Said Abdul Aziz alleged by executed a Deed of Sale in name of his wife Hafiza Bibi on 19/04/1954 in lieu of payment of deferred dower. Said Abdul Aziz was not the sole heir of the suit property and no capacity to execute a sale Deed in favour of his wife of the said Deed is false and manufactured and by the said alleged deed the defendant No.1 did not acquire the right, title, interest in the suit property.

6) In prayer portion at the end of para 7(a) the following portion will add – “and the defendant No.1 did not acquire any right, title, interest in the schedule property by dint of Sale Deed dated 19/04/1954”.

From the averments made in the application for amendment of the plaint, this Court does not find that the facts and the prayers sought to be incorporated by way of an amendment were not within the knowledge of the petitioners and that the petitioners despite due diligence could not have brought these facts to the knowledge of the court earlier.

It further appears that by way of an amendment at a belated stage when the arguments were going on, the challenge to the deed of sale dated April 19, 1954 was belated

and barred by the law of limitation. The plaintiff did not bother to challenge the same within three years from the date of knowledge. It is their case that the knowledge of the said deed was acquired with the filing of the written statement on March 14, 2008. The amendment application was filed on February 6, 2019 after 11 years from the date of filing the written statement. The order of the learned trial judge records that the P.W.1 in the affidavit-in-chief had denied the factum of existence of the deed and also put questions to the D.W.1 in the cross-examination on this point.

Thus, in my opinion, this time barred claim cannot be brought in by way of an amendment, even assuming the right to sue first accrued with the disclosure in the written statement of the alleged sale. A fresh suit on such amended claim would be a bar.

The decision of the Hon'ble Apex Court in the matter of **Revajeetu Builders & Developers vs. Narayanswamy & Sons**, reported in **(2009) 10 SCC 84 : [2015 (4) ICC (S.C) 127]** is referred to. The basic principles for grant or refusal of amendment articulated almost 125 years ago were still considered to be correct statement of law and our courts have been following the basic principles laid down in those cases. It would be relevant here to refer to the judgment of **Revajeetu Builders (supra)** where the Apex Court had not only traced the history of the provision but also after examining the English and Indian precedents laid down the following

guiding principles when dealing with the application under Order VI Rule 17:-

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. I can conclude my discussion by observing that while deciding

applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments but should never permit mala fide, worthless and/or dishonest amendments or time barred claims which would result in the travesty of justice.

The Hon'ble Apex Court in the matter of **M. Revanna vs. Anjanamma (Dead) by Legal Representatives & Ors.** reported in **(2019) 4 SCC 332**, held as follows:-

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

There is no irregularity in the order dated February 22, 2019. The order impugned is not interfered with.

The revisional application is dismissed.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)