

12.01.2021
Sl. No. 5
srm

C.O. No. 4303 of 2019

Dipak Singhanian

Vs.

Smt. Kalpana Shaw & Ors.

Mr. Nirmalya Dasgupta,
Mr. Chanchal Kumar Dutta,
Ms. Krishna Mullick

...for the Petitioner.

This is an application filed by the defendant No.1 in Title Suit No.209 of 2019 passed by the learned Judge, 2nd Bench, City Civil Court at Calcutta. The petitioner is aggrieved by the order dated November 26, 2019, by which the learned Court below allowed an application for amendment of the plaint. The learned Court below while considering the application for amendment filed by the plaintiff came to the conclusion that the amendment sought for would not change the nature and character of the suit and the correctness of the facts brought in by amendment would have to be proved by the plaintiff. The learned Court below also came to the conclusion that whether the amendment sought for was barred by limitation would also be determined after the framing of issues and at the trial. Thus, the learned Court below exercised its discretion and allowed the application for amendment after taking into account the objection raised by the defendant No.1, petitioner herein.

The suit is one for declaration that the plaintiffs are the co-sharers of a particular property. As per the averments made in the plaint the father of the defendant No.1 was a tenant. The defendant No.2 was a co-sharer of the plaintiffs. From the averments made in the plaint, it appears that the defendants were disturbing the possession, enjoyment, right, title and interest of the plaintiffs with regard to the suit property and common passages, pathways and entrances. It has also been averred that the defendant No.1 was trying to alienate the property and induct other tenants.

Reliefs were prayed for declaration and also injunction against the defendants including the defendant No.1. The relevant paragraphs of the plaint are stated below:

“12. That the defendant no.1 being a tenant in a joint property described in suit property – B has no right title interest or authority to had over the tenanted portion either to defendant no.2 or to any of the co-sharer inasmuch as from few days defendant no.1 and or his men and agents are regularly taking inspections of the suit property-B and the defendant no.1 and/his and men and agents are trying to hand over possession to a third party or to the co sharers specifically to the heirs of Brinchi Behari Shaw – the defendant no.2 which the defendant no.1 is not entitled to as the matter is sub judice before Your Honour’s Court.

13. That the defendants along with their men and agents are regularly visiting the suit property without the permission of the plaintiffs either in writing or oral in any manner whatsoever and keeping and storing household materials and stacking goods of and over the common entrances making the lives of the plaintiffs miserable and inhabitable which the

defendants are in no means entitled to having no legal status of their own.

14. That the defendants with the ulterior motive and with the mala fide intention are regularly causing obstructions, hindrances and obstacles in the ingress and egress trying to resist the user of common spaces, including the access to the common meter board inasmuch as to freely live their daily life whereby trying to and make attempts to obstruct the smooth use of the passages of the plaintiffs and threatening the plaintiffs with dire consequences inasmuch as if the plaintiffs do not allow the defendants to keep and stag and block and hinder the common areas of and over the said suit property to the defendants and their men and/or agents inasmuch as the defendants camouflaged with party colours are always hindering and creating impediment to the livelihood of the plaintiffs and their family members.

15. That the defendant no.1 along with his men and agents try to create huge hue and cry with the utmost try to handover possession of the suit property-B to the defendant no.2 or her agents but could not succeed due to intervention of some local people."

The defendant No.1 filed the written statement and claimed to have purchased the portion he was in possession from one of the co-owners. Thus, by way of an amendment, the plaintiffs wanted to incorporate the subsequent fact and rebut the same by incorporating appropriate pleadings and prayers challenging the transfer to the defendant No.1, as illegal, mala fide and liable to be cancelled.

I have gone through the plaint and I find that the suit is for declaration that the plaintiffs are the co-owners of the suit property. It is the plaint case that the defendants were disturbing the right, title, interest, possession and enjoyment

of the common passages and pathways of the plaintiffs with respect to the suit property. The father of the defendant No.1 was a tenant and the defendant No.1, who was in possession of the tenanted portion, was trying to induct the outsiders. Injunctions have been prayed for against the defendant No.1 from disturbing the right, title, interest, enjoyment of the suit property by the plaintiffs and also from disturbing the enjoyment of the pathways and the common passages. In the written statement the defendant No.1 made a rival claim of title over of his portion of the property, which the plaintiffs claim to be a tenanted portion. The amendment was necessary for proper adjudication of the dispute and to avoid multiplicity of proceedings. The merits of the amendment cannot be decided at this stage and the learned Court below rightly held that the question of limitation and the correctness of the amendment will be decided after the framing of issues and the trial. The learned Court below has exercised its discretion and there is no scope for interference in this case. The plaint case discloses the cause of action against the defendant who allegedly was disturbing the plaintiffs' right, title and interest over the property and declaration of ownership was the first relief prayed in the suit. When a rival title is being set up, the plaintiffs should be allowed to amend the plaint by challenging such averments and making

appropriate prayers for cancellation of the deed on the basis of which the defendant No.1 had claimed title. Limitation is a question of law and fact and it is for the plaintiff to prove that the plaintiff was not aware of the execution of the deed of sale and the amendment in the prayer for cancellation of the alleged deed was made within three years from the date of knowledge of its execution.

Reliance is placed on the decisions of (1) Md. Shahnawaz Khan & Anr. vs. Shaik Shajahan Hossain & Ors. reported in 2018(4) ICC 268 (Cal.) and (2) Bharat Karsondas Thakkar vs. Kiran Construction Company & Ors. reported in (2008)13 SCC 658. The decision cited by the learned Advocate for the petitioner in the matter of Md. Shahnawaz Khan & Ors. (supra) is not applicable in the facts of this case. In the said case the suit was originally filed for refund of the premium from sub-lessees but ultimately by an amendment, the plaintiff wanted to change the suit to one for eviction. For such reasons, the learned Court held that the amendment would change the nature and character of the suit.

In the decision of the Hon'ble Apex Court in the matter of Bharat Karsondas Thakkar (supra), the Hon'ble Apex Court held that even if the point of limitation was not taken into account, the amendment would change the nature and character of the suit from being a suit for specific performance

of an agreement to one for declaration and possession, followed by a prayer for specific performance of an agreement of sale entered into between its assignee and the vendors of the assignees.

The paramount object behind amendment of pleadings is that the Court should try the merits of the cases that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Power to allow amendment is undoubtedly wide and may at any stage be appropriately exercised, unless the same has been prayed for after trial has commenced. Amendment can be refused when the same was not needed to decide the real controversy, or the same introduced a totally different and inconsistent case or changed the fundamental character of the suit. In this case, the amendment sought for is necessary for proper adjudication of the dispute. These amendments will not cause any injustice to the parties inasmuch as the title of the defendant No.1 will be a point in issue to be decided in the suit in any event.

For reasons, as mentioned hereinabove, 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.)