

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. No. 256 of 2019

Sujoy Kumar Samanta
Vs.
Tarapada Roy
(Through Video Conference)

For the petitioners:	Mr. Anirban Bose Mr. Satyajit Senapati
For the opposite parties:	Mr. Atarup Banerjee Mr. Soumen Bhattacharjee

Heard on: **28.01.2022**

Judgment on: **04.02.2022**

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order No. 59 dated 12.12.2018 passed by the Learned Civil Judge (Junior Division), 2nd Court Arambagh , Hooghly in Pre-emption Misc. Case No. 8/2013 , present revisional application has been preferred under Article 227 of the Constitution of India.

2. Pre-emptor's/opposite party's case in a nutshell is that "Ka" schedule suit property to the plaint was purchased by the pre-emptor Tarapada Roy from Krishna Chandra Mondal and others, through a registered deed dated 05.05.2004. The "Ka-1" schedule to the plaint is adjacent the pre-emptor's "Ka" schedule land. Pre-emptor claimed that he is also adjoining owner of "Kha" schedule property to the plaint. Pre-emptor's vendor Krishna Chandra Mondal without giving any intimation to the pre-emptor, surreptitiously sold "Ka-1" and "Kha" schedule property in favour of petitioner herein/purchaser by a registered deed dated 29.11.2012. Aforesaid petitioner/purchaser namely Sujoy Kumar Samanta was neither a co-sharer nor an adjacent owner and he is totally a stranger purchaser in respect of "Ka-1" and "Kha" schedule property. Accordingly pre-emptor Tarapada Roy filed pre-emption case No. 8/2013 under section 8 of the West Bengal Land Reforms Act 1955. Be it mentioned that according to plaint, pre-emptor's "Ka" schedule property is comprising of 5 ½ satak of land out of total 36 satak of land in plot No. 587. Purchaser's "Ka-1" schedule property is comprising of 3 satak in said plot No. 587 and "Kha" schedule property is measuring 4 ½ satak in plot No. 586.

3. Petitioner herein as opposite party appeared in that pre-emption case and filed written statement and denied all allegations made in the pre-emption application. His positive case is that aforesaid "Ka-1" and "Kha" schedule properties are demarked properly and he purchased the said property by a registered deed which was executed on 29.11.2012 and was registered on

03.12.2012, on payment of consideration prices of 1,32,500 and after purchase , he became the co sharer of the suit property. His further case is that petitioner is neither adjoining land owner nor co sharer in respect of the suit property and as such petitioner does not have any right to pray for pre-emption.

4. It is submitted that when evidence of both the parties were concluded then plaintiff has come up with an amendment petition on 20.08.2018 contending that petitioner is an uneducated village rustic person and also belongs to Schedule Caste category. He had purchased some other portion of “Ka” Schedule property from one Chhobi Malik but he had forgotten about the said deed and on 17.08.2018 while he was searching for some other valuable documents, he suddenly discovered xerox copy of said other deed of purchase. In view of above, plaint is required to be amended as per schedule of petition, which provides that in paragraph No. 1 of his petition where it is stated that petitioner acquired title in “Ka” schedule property by a deed dated 04.05.2004, there it is also required to be incorporated that petitioner also acquired title in “Ka” schedule by way of other deed No. 701 for the year 2012 from one Chhobi Malik. Furthermore the total amount of “Ka” Schedule property is required to be stated as 6.5 satak instead of 5.5 satak, in the schedule to the Plaint.

5. Opposite Party Sujoy Kumar Samanta filed a written objection against said amendment petition, contending that the amendment petition is indistinct and is liable to be rejected. If the prayer for amendment is allowed,

then the first part of paragraph 1 of petitioner's application would become meaningless and schedule of the property would become vague. Accordingly he prayed for dismissal of the amendment application.

6. Learned Trial Court after hearing both the parties was pleased to dispose of the said application by the impugned order No. 59 dated 12.12.2018. Learned Trial Court was pleased to allow the amendment application with a cost of Rs. 2000/-, observing for proper adjudication of the matter and to avoid multiplicity of proceedings and to avoid unnecessary delay, the said petition is required to be allowed and in this context Learned Trial Court has relied upon Hon'ble Apex Court judgment reported in **AIR 2000 SC 614**.

7. Being aggrieved by the said order present revisional application has been preferred mainly on the grounds, that:-

- (a)** By way of amendment opposite party/ pre-emptor is trying to base his entire case on deed being No. 701/2012 and tried to introduce totally new case and as such if it is allowed, purchaser/petitioner herein will be highly prejudiced.
- (b)** If the proposed amendment is allowed on the basis of entirely new document, it will take away valuable right of admission made by the pre-emptor /opposite party.
- (c)** The opposite party pre-emptor is trying to cover up lacuna in the evidence and no reason had been assigned for filing this petition for amendment.

(d) Learned Trial Court should have realized that opposite party could have adduced certified copy of deed of conveyance if such was not readily available to the pre-emptor /opposite party, instead of that he allowed the prayer for amendment, which was filed after closure of evidence.

(e) The Learned Trial Court should have realized that once trial has been commenced or being concluded, it should not have allowed amendment application but instead of that by making a general statement that amendment should be allowed for determining real controversy in issue between the parties, learned trial court allowed the said amendment application.

8. By filing written argument petitioner /purchaser further taken the ground that this is a post trial amendment and court have to be very careful in allowing the application and to see whether “due diligence” criteria has been fulfilled by the person seeking amendment or not. Here the learned court below failed to do. The amendment application is absolutely silent as to how the document was discovered and in the said application how he exercised “due diligence”, has not been explained. In this context petitioner/purchaser has also relied upon 4 judgments:-

- (i)** AIR 2006 Supreme Court 2832, (Baldeb Singh & others vs. Manohar Singh & another)
- (ii)** 2014(2) Odisha Law Report 205, (Subhankar Sarangi & others vs. Raghunath Tripathy & others)

(iii) AIR 2008 Supreme Court 2234, (Chander Kanta Bansal vs. Rajinder Singh Anand)

(iv) 2009(1) Supreme 238(Vidyabai & Others vs. Padmalatha & another)

9. Before going to further details, I need to look into the probable impact upon the case, if the proposed amendment is allowed. As stated earlier petitioner's pre-emption case is originally based on his application that he has become owner of "Ka" schedule property measuring 5 ½ satak in plot No. 587 by way of a purchase deed dated 05.05.2004 and said "Ka" schedule property is adjacent to the land mentioned in "Ka-1" and "Kha" schedule, which are purchased by present petitioner/purchaser. Now by way of amendment pre-emptor/opposite party wants to incorporate, that by way of purchase through deed No. 701/2012 from Chhobi Malik, he has also become owner of another portion of "Ka" schedule land and as such the total ownership of pre-emptor's land in respect of "Ka", schedule which is adjacent to "Ka-1" and "Kha", schedule will be 6 ½ satak, instead of 5 ½ satak. As such only this portion of plaint case will be changed if proposed amendment is allowed and nothing more. I have already stated that in the written statement defendant has only denied the pre-emptor's /opposite party's averment made in the pre-emption application and he has hardly make out any positive case in his favour in the written statement. It is not his case that "Ka -1" and "Kha" schedule is not adjacent to "Ka" schedule.

10. Needles to say that the third proviso of section 8 (1) of West Bengal Land Reforms Act 1955, lays down rule of preference between two or more

contesting contiguous right. Accordingly if there were other contesting contiguous right and if such a case would have been made out that by way of amendment, pre-emptor / opposite party is trying to make his common boundary, longer after conclusion of trial, the question would have been otherwise. But in the present case if the proposed amendment is allowed the cumulative effect will only be that the amount of pre-emptor's contiguous land will increase from 5 ½ satak to 6 ½ satak and nothing more and secondly the amendment if allowed, the effect will be that all the cards would be placed before the court for making final adjudication of the case. The defendant in his written statement is not disputed that "Ka" schedule is adjacent to "Ka-1" and "Kha" schedule and he has also not challenged pre-emptor's purchase deed dated 04.05.2004 and as such if the proposed amendment is allowed the question of changing the nature or character of the suit, does not arise, as even after proposed amendment, the suit will remain a pre-emption suit on the ground of adjoining ownership in respect of the "Ka" schedule. I also do not find any substance in petitioner's contention that pre-emptor / opposite party is trying to base his case entirely on the deed being No. 701/2012, because apart from the said deed, pre-emptor has make out his case in respect of the "Ka" schedule property by dint of his purchase deed dated 04.05.2004 as pleaded in paragraph 1 of plaint. Petitioner herein has also failed to convince this court, what valuable right of admission made by pre-emptor is going to be withdrawn, if the proposed amendment is allowed and there is also nothing to show that in order to fill up any lacuna,

proposed amendment has been sought for. This is simply because the pre-emption case was originally based on adjacent land of the pre-emptor in respect of the 5 ½ satak, which is going to be increased by 6 ½ satak in respect of said adjacent “Ka” schedule, if the proposed amendment is allowed. For the purpose of adjudication of real controversy between the parties, the Trial Court is only required to consider whether the pre-emptor is entitled to get pre-emption decree on the ground of adjoining ownership of land or not and for that purpose it is immaterial in the present context whether his ownership is to the extent of 5 ½ satak or to the extent of 6 ½ satak, as proviso three of sec 8(1) does not attract in the present case.

11. If that be so, then the necessity of the proposed amendment may be questioned and to that aspect my view is that the amendment is only necessary, so that before final adjudication, all the cards having in possession of the parties, should be placed before the court.

12. Then the only question left for discussion is that, under order VI Rule 17 of Civil Procedure Code (CPC) no application for amendment shall be 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 trial. Accordingly Learned Counsel for the petitioner /purchaser contended that the issue of “due diligence” has neither been pleaded nor being explained and the amendment application is absolutely silent on that issue.

13. On perusal of amendment application it appears that in the first line, the pre-emptor/opposite party has stated that he is an uneducated village rustic person, belonging to schedule caste community and on 17.08.2018 while he was searching for other documents, he discovered xerox copy of the said deed and then he had brought it to the notice of his lawyer. In the written objection filed by petitioner herein /purchaser, has not denied or disputed said contention made by the pre-emptor/opposite party. In the absence of denial, if the said statement is treated as worthy to be trusted, then it does not attract rigour of proviso to Rule 17 of order VI of C.P.C. The Judgments cited by Learned Counsel for the petitioner/purchaser also does not support petitioner's case because, case law reported in **AIR 2006 SC 2832**, it was observed that courts should be extremely liberal in granting prayer for amendment, unless serious injustice or irreparable loss is caused to other side. In the present case what is sort to be incorporated by way of amendment, is not at all inconsistent with the pre-emptor's earlier plea, rather if the amendment is allowed it comes by way of additional fact. Petitioner/purchaser nowhere explained how the proposed amendment will cause serious injustice or irreparable loss to him. In the case reported in **2014 (2) Odisha Law Report 205** the plea of due diligence was taken in a case, where plaintiff wanted to incorporate by way of amendment, the facts which were already in record, but that is not the issue in the present context. In **AIR 2008 SC 2234**, it was observed by the Hon'ble Apex Court that the words "due diligence" has not been defined in the Code. However, "Due diligence" means the diligence

reasonably expected from and ordinarily exercised by a person who seeks to satisfy legal requirements or to discharge an obligation. "Due diligence" in law means doing everything reasonable and not everything possible. In the present cases I have already noted that the reason of not filing the documents in time, as set out by the pre-emptor in his first sentence of the amendment application, has not been denied or disputed by the petitioner/purchaser. Accordingly said case law is not strictly applicable in the present context. The case law cited in **2009(1) Supreme 238**, reiterates well settled principle of law that court should allow amendments, that would be necessary to determine the rule question of the controversy between the parties but the same indisputably would be subject to condition that no prejudice is caused to the other side. Here, I have stated that the petitioner /purchaser has miserably failed to establish, how proposed amendment would be prejudicial for his interest. There is nothing to show that the pre-emptor had acted anything mala-fide in respect of amendment petition and there is nothing to show that due to petitioner's blunder , if any, petitioner herein/purchaser suffered any injury which cannot be compensated by cost. Petitioner/Purchaser has also not made it clear, how he will be prejudiced on the ground that he had already disclosed his defence. On perusal of written statement, one can gather, that the petitioner has denied the averments made by the pre-emptor in his first part of pre-emption application and the other part of his written statement only relates to the statement in respect of his purchase of "Ka-1" and "Kha" schedule land, which is undisputed.

14. In view of the aforesaid facts and circumstances of the case, I find nothing to interfere with the observation made by the Trial Court in his impugned order No 59 dated 12.12.2018. However, it appears from the impugned order, that Trial Court while allowed the amendment petition has also given opportunity to the petitioner /opposite party to file additional written statement, if any.

15. C.O. No. 256/2019 is accordingly dismissed.

There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)