

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. No. 341 of 2019

**Rahima Bibi
Vs.
Md. Pentu Sekh**

(Via Video Conference)

For the petitioner: Mr. Partha Pratim Roy

Heard on: 04.02.2022

Judgment on: 17.02.2022

Ajoy Kumar Mukherjee, J.

1. Present revisional application has been preferred by the petitioner Rahima Bibi under Article 227 of the Constitution of India as she felt aggrieved by the order No. 14 dated 12.09.2018, passed by the Learned Civil Judge (Junior Division) Additional Court, Lalbagh, Murshidabad in Title Suit No. 165/2017. By the aforesaid impugned order, learned Trial Court was pleased to reject petitioners prayer for amendment of plaint.

2. Petitioners case in a nutshell is that petitioner as plaintiff filed Title Suit No. 165/2017 before the Learned Civil Judge (Junior Division), Lalbagh, Murshidabad contending that the schedule mentioned suit property was purchased by the defendant and while he was in possession of suit property, defendant had sold the same in favour of plaintiff Rahima Bibi by a registered deed dated 14.10.1991 and delivered possession in favour of plaintiff. Plaintiff after getting possession of the same, constructed tin shaded room and also planted various fruit bearing trees. Be it also mentioned that plaintiff had taken loan from bank of India for purchasing tractor by mortgaging the aforesaid deed dated 14.10.1991 to the bank. Further case of the plaintiff/petitioner herein is that she also acquired Title in the schedule mentioned suit property by way of adverse possession.

3. Since purchase plaintiff did not face any difficulty in possessing the schedule mentioned suit property, but on 01.06.2017 defendant /opposite party suddenly came to the suit property and declared that he had never sold schedule mentioned suit property in favour of plaintiff and accordingly he has evicted plaintiff from the said suit property. Plaintiff got astonished with this and after collecting copy of the said sale deed dated 14.10.1991, from the concerned bank, she came to know that due to mistake committed by deed writer, khatian No. has been erroneously written as 604 and plot No. has been wrongly written as 689, though it should have been written as khatian No. 88 and plot No. 604. At the time of the execution of the deed, no one had noticed aforesaid mistake and contents of the deed was never read over or explained to

the parties and defendant on good faith had executed and registered the said deed. If the aforesaid mistake would have pointed out at the time of execution and registration of the deed, defendant would have certainly rectified the said mistake, which occurred due to inadvertence. Accordingly plaintiff has given details of the said deed in “Kha” schedule and stated that unless said mistake be rectified various future complications will arise and accordingly he has prayed for declaration of title in the schedule mentioned suit property and also for permanent injunction restraining defendant from disturbing plaintiffs possession in the suit property.

4. Defendants appeared in that suit and filed written statement. Defendant’s specific case is that plaintiff is the elder sister of the defendant and suit plot, total measuring 62 satak, originally belonged to Subeda Bewa and while said Subeda Bewa was in possession of the suit property, she sold the same in favour of one Md. Abdul Goni, Abdul Sujant and Pentu Sk on 18.09.1974, through registered deed.

5. In view of said deed dated 18.09.1974 Pentu Sk became owner of $20\frac{2}{3}$ (1/3rd of 62 satak) and while said Pentu Sk was in possession of the same, he had transferred the said property in favour of his wife Rijia Bibi by way of *Hebanama* deed dated 03.10.2016. The name of Rijia Bibi has been duly recorded in L.R. Record of Rights and said Rijia Bibi presently possessing the said plot of land peaceably, openly.

6. Defendant/opposite party herein categorically stated in his written statement that he never executed any deed in favour of plaintiff in connection

with the suit plot on 14.10.1991 and practically the deed dated 14.10.1991 is a fraudulent deed obtained by way of the false personification and accordingly he has prayed for dismissal of the suit.

7. While the suit was pending plaintiff has come up with an amendment application on 27.02.2018 for amendment of plaint. From the item no. 1 of the schedule of the said amendment application it appears that plaintiff wants to incorporate in the prayer portion that after rectification of the “Kha” schedule deed plaintiffs right title interest in the suit property be declared along with permanent injunction. From the item No. 2 to the schedule to the amendment application it appears that by way of amendment, plaintiff wants to incorporate that after paragraph “6(Ka)” a new prayer to be added for rectification of “Kha” schedule deed by deleting khatian No. 604 in it’s place khatian No 88 will be inserted and plot No. 689 would be deleted from “Kha” schedule deed and in it’s place plot No. 604 would be incorporated. It further appears from item No. 3 of the schedule to the amendment application that after paragraph “6(Ka)” to the plaint, plaintiff wants to incorporate another prayer by way of amendment that learned court may send copy of order relating to deed rectification to the concerned registry office with a direction to rectify the concerned “Kha” schedule deed.

8. Plaintiff in item No. 4 to the schedule of his amendment application has also sought for inserting boundary of the “Ka” Schedule mentioned suit property measuring 15 satak and it also appears from item No 5 of the schedule to the amendment application that plaintiff wants to correct the name

of defendant and in terms of item No. 6 of schedule to the amendment application , plaintiff sought to incorporate by way of amendment a statement that if scrutiny is made it would reveal that L.R. plot No. 689 was never recorded in the name of the defendant.

9. Defendant/opposite party herein, filed written objection to the amendment application and denied all material allegations. Defendant further contended that with an ill motive present application for amendment has been filed in order to delay the proceeding of the suit and furthermore, if the proposed amendment is allowed it will change the nature and character of the suit and new fact would be introduced, for which plaintiff will suffer irreparable loss and injury. Not only that, if proposed amendment is allowed, then fictitious schedule would become operative and Defendant specifically denied that he ever executed any such deed and the story created by the plaintiff in this context are false and as such prayer for amendment application is liable to be rejected .

10. Learned Trial Court after hearing contention of both the parties was pleased to reject the prayer for amendment vide order No. 14 dated 12.09.2018 with an observation that by way of amendment plaintiff is trying to change the nature and character of the suit, from earlier one and as such proposed amendment cannot be allowed.

11. Needless to say that the question whether amendment is to be allowed, would depend upon parameters indicated in Order VI Rule 17 of the Civil Procedure Code (C.P.C.). Some of the essential principles governing amendment

is that all amendments will be generally permissible when they are necessary for determination of the real controversy in the suit but at the same time it must not amount to the substitution of one cause of action or the nature of the claim for another in the original plaint or change the subject matter or controversy in the suit. An amendment which is not necessary for determining the real questions in controversy will not be allowed. Amendment can be allowed which does not constitute an addition of a new cause of action or raised a different issue but amounts merely to a different or additional approach to the same facts. In other words an amendment which merely clarifies an existing pleading and does not in substance add to or alter, it can be allowed.

12. In view of the aforesaid principles of law relating to amendment, let me consider each of the six items mentioned in the schedule to the proposed amendment application. In view of the item No. 1 to the schedule of proposed amendment application, it appears that originally the prayer of the plaint was for a declaration of plaintiff's right in the suit property and for permanent injunction restraining defendant from disturbing plaintiff's possession. Now if item No. 1 of the proposed amendment is allowed then the prayer would be like 'after rectification of the schedule deed plaintiffs right title interest in the suit property may be declared'. This prayer for amendment is clearly a vague one because learned Trial Court is not supposed to make any rectification of the deed and in the absence of any such rectified deed court is not supposed to declare someone's right title interest, in the plot. This is also because

defendant in his written statement and written objection categorically stated, that he had not executed any such deed in favour of plaintiff and if that be so, proposed amendment mentioned in item No. 1 to the schedule of amendment application is not required to determine the present controversy between the parties. On the contrary if said portion of amendment is allowed there is serious chance of causing prejudice to the defendant, who denied execution of the said alleged deed.

13. As appearing from item No. 2 of the schedule to the amendment petition that by way of amendment, plaintiffs wants to incorporate after paragraph “6 Ka” to the plaint for addition of a new prayer for passing an order of rectification by court in respect of “Kha” schedule deed by which khatian No. 604 to be deleted and in its place khatian No.88 to be incorporated and plot No. 689 to be deleted and in its place plot No. 604 to be incorporated. This portion of amendment also appears to be vague, and not required for present adjudication in view of the fact that there is no pleading that defendant or his men had practised fraud upon plaintiff. On the contrary plaintiff case is, mentioning of wrong schedule in the deed, occurred due to mistake, whereas defence case is no such execution or registration even took place and the deed in question is a manufactured deed on the basis of false personification.

14. The real controversy between the parties as it appears from pleading which needs to be adjudicated in the suit is whether defendant had transferred suit plot No. 604 in favour of plaintiff by executing any registered deed or not and/or whether plaintiff has acquired title through deed or otherwise in the

suit property or not, to get a declaration and /or injunction. Needles to say that originally the suit was filed with a prayer for declaration of plaintiff's right title interest in the suit property and for permanent injunction, but if the item No. 2 of schedule to the amendment application is allowed, it would change the nature and character of the suit in as much as the suit for declaration and injunction would be converted into a suit for direction for rectification of the deed which is not permissible in the eye of law.

15. Proposed amendment as stated in item No.3 that after paragraph "6 Ka" of the plaint, the statement which is proposed to be added is, to pass a direction for rectification of "Kha" schedule deed by sending a copy of order of rectification of the deed, to the concerned registry office. This portion of amendment is imaginary and not at all required for the purpose of adjudication of the present suit, as no such order for rectification of deed has yet been passed by the trial Court and as such the question of sending copy of the order to the registry office for passing a direction upon registry office for rectification of deed, on the basis of an imaginary deed-rectification order, does not arise and as such proposed amendment as mentioned in item No.1 , 2,& 3 of the schedule to the amendment application is not only vague and indefinite but also absolutely unnecessary for the purpose of adjudication of the present suit.

16. It further appears in item No. 4 of the schedule to the amendment petition that plaintiff by way of amendment wants to specify the boundary of the suit plot, which according to me can be allowed as it constitutes additional

approach to the same fact and also amounts to adding to the facts already on record. Similarly proposed amendment as mentioned in item No 5 is also required to be allowed as it merely a proposal for making correction of defendants name from "Paint Sk" to "Pantu Sk", which has not been denied or disputed by the defendant. Item No. 6 of the schedule to the amendment petition can also be allowed by which plaintiff wants to incorporate at the end of paragraph 3 that on scrutiny it would reveal that plot No. 689 is owned by some other person and it was never owned by defendant Pantu Sk. As it is a matter of entry in Records of Rights so if this item of amendment is allowed it would also amount to additional approach to the same fact which would not cause prejudice to the defendant if allowed.

17. In view of the aforesaid discussion I am inclined to allow the civil revision in part. Prayer for amendment of plaint as mentioned in item No. 1,2 & 3 of the schedule, to the amendment application is rejected and to that extent observation of learned Trial Court stands affirmed. However, proposed amendment of plaint as mentioned in item No. 4, 5 and 6 of the schedule to the amendment application are hereby allowed to be incorporate in the plaint by way of amendment and as such to that extent only impugned order is hereby set aside. Let the plaint be amended as per item No. 4,5, and 6 of the schedule to the amendment application and plaintiff is directed to file amended plaint before Trial Court.

18. C.O. No. 341/2019 is allowed in part.

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.

Let the copy of the order be sent to the learned Civil Judge (Junior Division), Additional Court at Lalbagh, Murshidabad.

(AJOY KUMAR MUKHERJEE, J.)