

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee.

C.O. No. 255 of 2018

Kenaram Pramanick

Vs.

Shital Betal & Ors.

(Via Video Conference)

For the petitioners:

Mr. Mahammad Mahmud

Mr. Sk.I. Alam

Mr. Pinaki Das

For the opposite parties:

Mr. Nilanjan Bhattacharjee

Mr. Arpan Guha

Heard on:

03.02.2022

Judgment on:

10.03.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated November, 23rd 2017, passed by the Learned Civil Judge (Junior Division), 4th Court, Howrah in Title Suit No. 235 of 2013, present petitioner /plaintiff preferred this Revisional Application under Article 227 of the Constitution of India. By the

impugned order learned Trial Court pleased to reject plaintiff's prayer for amendment of the plaint.

2. Plaintiff's case in a nutshell is that plaintiff instituted Title Suit No. 235/2013 contending *inter alia* that the schedule mentioned suit property to the plaint, belonged to Shib Chandra Pramanick and Ananta Kumar Pramanick and while they were in absolute possession of the same, they sold it to Atul Chandra Pramanick and Anukul Chandra Pramanick by registered deed dated 28.02.1970. After purchase they got possession and while they were in possession, they sold the said suit property to the plaintiff by executing deed dated 01.02.1975 and delivered possession to the plaintiff and since then plaintiff is in absolute possession of the same. During L.R. attestation, the suit schedule property was recorded in the name of plaintiff but in the final publication, 12 decimal of land in plot No. 414 was wrongly recorded in the name of Atul Chandra Pramanick and taking advantage of such erroneous recording, Atul Chandra Pramanick and his agents and legal heirs of Anukul Chandra Pramanick are trying to take forcible possession of the said schedule property and in this connection two cases being Title Suit No. 163 of 2005 and Misc Case No. 14 of 2010 are still pending before the learned Civil Judge (Junior Division), 4th Court, Howrah. During pendency of the aforesaid Misc Case No. 14 of 2010 in connection with Title Suit No. 163 of 2005, Atul Chandra Pramanick since deceased, allegedly executed a power of attorney in favour of defendant No. 2 to 5 and on the basis of said power of attorney, defendant No.2 to 5, on behalf of Atul Chandra Pramanick executed a deed of sale in favour of defendant No.1 on 18.11.2005, but the plaintiff was not aware

about the said deed. Few months back, some persons with vested interest along with defendants came to the suit plot and claimed that they have purchased 13.5 decimal of land in plot No. 414 and are threatening that they would dispossess the plaintiff from the schedule mentioned suit property. Atul Chandra Pramanick, since deceased, executed the said deed, by exercising fraud, misrepresentation, undue influence and said deed was never acted upon. So, the plaintiff filed the present suit being T.S. 235/2013 for declaration and permanent injunction.

3. The defendants No.1 contesting the said suit by filing written statement and denied all material allegations and contended *inter alia* that the plaintiff already sold out his property, so he has no right title interest in the property and as such defendant prayed for dismissal of the suit. In the said suit evidence of plaintiff i.e. PW1 & 2 are completed and the evidence on behalf of DW1 is also completed.

4. When the cross-examination was going on it was found that some necessary fact regarding purchase of the property by Atul Chnadra Pramanick and Anukul Chnadra Pramancik from Shib Chandra Pramanick and Anant Kumar Pramanick by deed of sale dated 20.02.1970, though mentioned in the plaint, but details of said deed could not be understood due to unavailability of an authentic copy of the same. Now after getting certified copy of the said deed of 1970 and defendant's deed dated 17.03.1978, it appears that without the said two deeds, right of the parties cannot be determined and the suit also cannot be finally adjudicated. Accordingly plaintiff filed an application under Order 6 Rule 17 for amendment of the plaint.

5. Defendant No.1 filed written objection against the application for amendment and denied all material allegations and contended that the proposed amendment as sought for, is not permissible in law as it was filed at a belated stage, when the evidence of defendant has been concluded. Accordingly the application for amendment is frivolous and liable to be rejected.

6. The said application for amendment came up for hearing before the learned Trial judge on 23.11.2017 and learned Trial Judge by its order No. 7 was pleased to reject said application with the observation that Order VI Rule 17 of C.P.C. puts an embargo in allowing an application for amendment after commencement of trial. Accordingly Trial Court has no jurisdiction to allow the application for amendment unless it comes to a conclusion that inspite of due diligence, the party could have raised the matter before the commencement of trial. It was further observed that in the petition praying for amendment the plaintiff has failed to state grounds as to what debarred them from preferring the instant amendment at an early stage and why he could not know the facts during long pendency of the said suit. It is also not clear as to how and what point of time he gathered knowledge of the fact which are required to be incorporated by way of amendment. Accordingly keeping in mind the normal standard of care and conduct of a reasonably prudent and diligent person, it cannot be inferred that the plaintiff failed to raise the matter earlier, inspite of due diligence. Accordingly learned Trial Court concluded that no person ought to derive any advantage from his own wrong.

7. In the present case plaintiff has contended in his plaint that the schedule mentioned suit property originally belonged to Shib Chandra Pramanick and Annant Kumar Pramanick. While they were in absolute possession, they sold the suit property to Atul Chandra Pramanick and Anukul Chandra Pramanick by a registered deed dated 28.02.1970 and delivered possession. On perusal of plaintiff's deed, executed by Atul Chandra Pramanick and Anukul Chandra Pramanick, it appears that there is a reference of deed No. 739 dated 28.02.1970 by which plaintiffs vendors Atul and Aukul purchased the suit property from Shib Chandra Pramanick and others. Though the deed No. has been mentioned as 739 both in the plaint as well as in the plaintiffs deed dated 01.02.1975, but on perusal of the copy of aforesaid deed dated 28.02.1970 as filed before this court, it appears that number of said deed is 737 and not 739. Said deed was executed by Shib Chandra Pramanick in favour of Atul and Anukul and it has been clearly recited in the said deed dated 18.02.1970 that the vendor of the deed became owner of half share of 1 acre 6 satak from plot No. 410, 413 and 414 which is covering 53 satak out of which vendor of said deed previously sold 33 satak and now by that deed sold rest 20 satak in favour of Atul and Anukul.

8. On perusal of schedule of amendment it appears that by way of inserting paragraph 1A plaintiff wants to incorporate the geneology which derives from Gopal Chandra Pramanick and he also sought for amendment the aforesaid fact of acquisition of title by Shib Chandra Pramanick which subsequently passed to Atul and Anukul by way of aforesaid deed No. 737. In the last but one paragraph of the schedule for amendment petition plaintiff wants to

incorporate that defendant fraudulently procured sale deed from Atul on the ground that no permission was obtained from learned District Judge ,Howrah for selling out minors property. Now as regards the first portion of the prayer for amendment as stated above, it is clear that by way of amendment plaintiff wants to incorporate the geneology from Gopal Chandra Pramanick which is not denied or disputed by the defendant, in his objection against amendment application and secondly, he wants to agitate the distribution of share as recited in the aforesaid deed No. 737. Both plaintiff and defendant claimed their title from Atul Chandra Pramanick and as such if Atul's deed of purchase dated 28.02.1970 being manifested clearly by way of amendment neither party will have a cause to prejudice, rather it would help the court to determine the issue conclusively .

9. As regards second portion of amendment starting from the words

“The defendants fraudulently procured sale deed from Atul Chandra Pramanick because earlier alleged sale deed in the year 1978 is void on the reason that no permission was obtained from the District Judge, Howrah for selling out the minor's property and also legal heirs of Kamal Pramanick did not obtain the suit property measuring about 13 $\frac{3}{4}$ sataks and as such the subsequent alleged sale deeds are not binding upon the plaintiff.

In the prayer portion of the plaint in prayer 11(b) in 2nd line word “existing” be deleted and word “co” be added.”

cannot be allowed because defendant has specifically stated in his written objection against plaintiff's application under section 138 of Evidence Act, that plaintiff previously on 11.07.2017 filed one application under Order VI Rule 17 read with section 151 of Code of Civil Procedure for amendment of plaint wherein at paragraph No. 4 of the application the plaintiff stated that the

defendant fraudulently procured sale deed from Atul Chandra Pramancik because alleged sale deed in the name of defendant for the year 1978 is void on the ground that no permission was obtained from learned District Judge, Howrah and upon contested hearing the said application for amendment was rejected by the court and nothing to show that said order was challenged. Plaintiff has not denied the said fact and as such said rejection order attained it's finality.

10. But still there is a question that in view of provision under Order VI Rule 17, after closure of the plaintiff's evidence and partly after the closure of defendant's evidence, whether prayer for amendment can be allowed even if first part of proposed amendment merely deals with the geneology of the vendor of both the parties and acquisition of title by the vendor of the both parties as recited in deed No. 937. This is also because beside mere averment about the case of due diligence, there is nothing to show in the amendment application at what point of time plaintiff gathered the knowledge , which he should have mentioned.

11. In this context it can be stated that proviso under Order VI Rule 17 certainly speaks that no application for amendment shall be allowed after the trial has commenced unless the court comes to conclusion that inspite of due diligence, the party could not have raised the matter before commencement of trial. But still first part of said Rule 17 under Order VI provides that "the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and in such terms as may be just, and all such

amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.”

12. On perusal of amendment application it appears that in the second paragraph, the plaintiff has stated that he is not a literate person and can only put signature in Bengali. In the written objection filed by defendant/opposite party, has not denied or disputed said contention made by the plaintiff. Generally courts should be liberal in granting prayer for amendment, unless serious injustice or irreparable loss is caused to other side. In the present case what is sought to be incorporated in the first part of schedule by way of amendment, is not at all inconsistent with the plaintiff's earlier plea, rather if the amendment is allowed it comes by way of elaboration of earlier fact. Defendant/opposite party nowhere explained how the first part of proposed amendment, if allowed, will cause serious injustice or irreparable loss to him. 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 case, I have already noted that the reason of not filing the documents in time, as set out by the plaintiff in amendment application, is because he is not literate which has not been denied or disputed by the defendant/ opposite party. Court should allow amendments, that would be necessary to determine the real question in 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 defendant/opposite party has not established, how first portion of proposed amendment would be prejudicial for his interest. There is nothing to show that the plaintiff had acted anything *mala-fide* in not praying first part of amendment in time and there is nothing to show that due to plaintiff's blunder, if any, defendant /opposite party suffered any injury which cannot be compensated by cost.

13. In view of above first part of amendment prayer is required to be allowed to determine the real question in controversy but the last part of schedule of amendment which runs from

“The defendants fraudulently procured sale deed from Atul Chandra Pramanick because earlier alleged sale deed in the year 1978 is void on the reason that no permission was obtained from the District Judge, Howrah for selling out the minor’s property and also legal heirs of Kamal Pramanick did not obtain the suit property measuring about 13 ³/₄ sataks and as such the subsequent alleged sale deeds are not binding upon the plaintiff.

In the prayer portion of the plaint in prayer 11(b) in 2nd line word “existing” be deleted and word “co” be added.”

is liable to be rejected as said portion of amendment had earlier been rejected by the competent court of law. Defendants will have no cause to prejudice by the proposed amendment if the opportunity of filing additional written statement be given to them.

14. In view of the above C.O. No.255 of 2018 is allowed in part. From Proposed amendment, following portion of schedule to amendment petition

“ ‘1A’ That the suit property originally belonged to Gopal Chand pramanick who subsequently died leaving behind three sons namely Ambika Charan Pramanick, Gangadhar Pramanick and Gostha Behari Pramanick. They inherited the suit property. Gostha Behari Pramanick died leaving behind three sons namely Samatul Pramainck, Atul Chanra Pramanick and Anukul Chandra Pramanick. Therefore, said

Ambika Charan Pramanick and Gangadhar Pramanick each having undivided 1/3rd share of the suit property and said three sons of Gostha Behari Pramanick jointly got 1/3rd share of the suit property. According to C.S. Record of rights Ambika's share is undivided 1/3rd . (i.e., 5 anas 6 gonda 2kara 2 kranti), similarly Gangadhar's share is undivided 1/3rd .(i.e., 5 annas 6 gondas 2kara 2 kranti). Three sons of Gostha Behari having 1/9th share each of the suit property and as per C.S. Record namely sanatul having one anna 15 gondas, 13 til, Atul having one anna 15 Gondas, 13 til and Anukul having one annas 15 gonda 13 til.

After the paragraph 4 of the plaint, the following sentences be added as follows:-

Thereafter Gangadhar Pramanick died leaving behind his sons namely sibu Pramanick, Ananta Pramanick and Jatan Pramanick. Therefore, said three sons of Gangadhar having undivided 1/9th share each(as per R.O.R. it is written samatul having one anna 15 gondas, 13 til, Atul having one anna 15 gondas 13til and Anukul having one annna 15 gondas 13 til.

Atul Pramanick and Anukul Pramanick purchased the property in the year 1970 from sibcharan Pramanick and Annata Pramanick and subsequently Atul Pramanick and Anukul Pramanick sold out the said property to the plaintiff in the year 1975. Therefore, the plaintiff did not sale out the property which he acquired from Atul and Anukul.

The plaintiff submits that Ambika Pramanick died leaving behind four sons namely Ratan Pramanick, Kamal Pramanick Dhananjoy Pramanick and Santosh Pramanick. They got undivided 1/4th share each and as such Kamal pramanick having undivided 1/12th share (1/3 x 1/4) of the suit property.

Thereafter, kamal Pramanick died leaving behind his wife satya Bala and three sons i.e. Becharam, Kenaram (Plaintiff hereto) and Bhadreswar.”

is allowed but the portion of schedule of amendment

“The defendants fraudulently procured sale deed from Atul Chandra Pramanick because earlier alleged sale deed in the year 1978 is void on the reason that no permission was obtained from the District Judge, Howrah for selling out the minor's property and also legal heirs of Kamal Pramanick did not obtain the suit property measuring about 13 ¾ sataks and as such the subsequent alleged sale deeds are not binding upon the plaintiff.

In the prayer portion of the plaint in prayer 11(b) in 2nd line word “existing” be deleted and word “co” be added.”

is rejected. Plaintiff is directed to file amendment application before the Trial Court and learned Trial Court will give an opportunity to the defendant to file additional written statement before recalling any witness.

15. C.O. No. 255/2018 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 send to the Learned Civil Judge (Junior Division), 4th Court, Howrah.

(AJOY KUMAR MUKHERJEE, J.)