

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

**C.O. No. 810 of 2022
Smt. Sarala Mahato & Ors.
Vs.
Smt. Anguri Mahato & Ors.**

For the Petitioners	: Mr. Chittapriya Ghosh, Ms. Priyanka Saha, Ms. Komal Singh.
For the Opposite Parties	: Mr. Falguni Bandyopadhyay, Ms. Riya Ballav.
Heard On	: 08.09.2022, 29.07.2022.
Judgment	: 27.09.2022.

Subhasis Dasgupta, J:-

Rejection of a prayer for amendment is under challenge in this case. By order dated 11th March, 2022, Learned Civil Judge (Junior Division), 2nd Court, Purulia in Title Suit No. 72 of 2008 rejected such amendment.

Mr. Chittapriya Ghosh, learned advocate appearing for the petitioners/plaintiffs submitted that by the proposed amendment, the incident held on 30.06.2021, relatable to dispossession of petitioners/plaintiffs from the suit property, for the defendants having trespassed into the suit land, had been sought to be introduced upon inviting an amendment, but the same was rejected by the court below.

The alleged story of dispossession of petitioners/plaintiffs from the suit property is also subject to another claim of recovery of possession in the pending litigation.

It was thus contended by Mr. Ghosh that it was a subsequent event that had taken place during the pendency of litigation, and the proposed amendment ought to have been allowed by the court below.

Reliance was placed by Mr. Ghosh on a decision reported in **2022 SCC OnLine SC 1128** delivered in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another***, to enforce the stand of petitioners that the proposed amendment should have been necessarily allowed for determining the real question of controversy, as the same would not cause injustice or prejudice to the other side.

While making elaboration of such issue, Mr. Ghosh submitted that by the proposed amendment, the petitioners did not seek to withdraw, nor it had a relatable reference to a time barred claim, and would enable the court to pin-pointedly consider the dispute and would further aid in rendering a satisfactory decision.

It was thus emphasized by Mr. Ghosh that delay in applying for amendment alone, would not be the ground to disallow the same, for the aspect of delay being arguable one.

Mr. Falguni Bandyopadhyay, learned advocate appearing for the opposite parties submitted, denying the submission of Mr. Ghosh, that the story of alleged dispossession had been cooked up, as

defendants/opposite parties were all along in possession of suit property, on the strength of sale deed, executed in the year 1971, for more than 50 years.

It was thus submitted by the opposite parties that the date of alleged dispossession, mentioned in the schedule to the plaint for amendment, is fictitious one, and more so, there had been three previous amendments already allowed on the prayer of petitioners with costs, for which the instant amendment, being fourth one, should not have been allowed in context with the principle, that piecemeal amendment would be contrary to the sanction of law.

As the proposed amendment was relatable to infraction of Articles 64, 65 of the Limitation Act, and provisions of Specific Relief Act, amount of court fees, liable to be deposited, before hearing of amendment petition together with valuation of the suit property, should have been ascertained first, by calling a report from District Registrar for the purpose.

Further challenge was raised by Mr. Bandyopadhyay that at the belated stage of the suit, the proposed amendment should not be considered ignoring the proviso contained in Order 6 Rule 7 of Code of Civil Procedure.

Reliance was placed by learned advocate for the opposite parties on a decision reported in **2010 SCC OnLine P&H 1317** delivered in the case of **Khusi Ram Vs. Murli Manohar Thatheran Panchayati Mandir & Dharamsala** to contend that no amendment could be allowed after commencement of trial, unless the court comes to conclusion that in spite

of due diligence, the parties could not have raised the matter before the commencement of the trial.

While making elaboration of such decision, Mr. Bandyopadhyay submitted that the commencement of the trial having been taken place already, the petitioners seeking amendment had failed to establish that despite due diligence he could not have invited the proposed amendment earlier.

Reliance was further placed on a decision reported in **AIR 1996 Supreme Court 2358** delivered in the case of **Radhika Devi Vs. Bajrangi Singh & Ors.** to contend that when by the proposed amendment, the petitioners had proposed for recovery of possession, the effect of the amendment would be to take away a legal right, what opposite parties had accrued in the meantime with the passage of time, on the strength of their alleged uninterrupted, continuous possession vide their sale deed executed in the year 1971 with respect to subject property under reference.

In reply Mr. Ghosh submitted that though issues in this case had already been framed on 17th July, 2019, but no witness thereafter had been examined, followed by tender of evidence-in-chief, under Order 18 Rule 4 C.P.C.

According to Mr. Ghosh, there had been no effective commencement of trial, as the affidavit-in-chief could not be furnished, as yet.

Rejection of prayer for amendment is virtually on fundamental ground, for attracting the mischief, mentioned in Order 6 Rule 17 C.P.C.,

for the amendment having being proposed at the belated stage, i.e. after the commencement of trial.

The schedule of the proposed amendment goes to show that during the pendency of the litigation, the petitioners claimed to have been dispossessed on 30th June, 2021, for which the petitioners proceeded to incorporate a prayer for recovery of possession of the land, already dispossessed, which is grossly challenged by the opposite parties.

Upon seeing the schedule of proposed amendment, it appears that amendment if allowed, would not change the nature and character of the pending suit.

The proposed amendment would, however, facilitate the court below to unfold the controversy surfaced at the moment, giving appropriate decision for the purpose.

The story of dispossession, followed by insertion of a prayer for recovery of possession is always subject to proof, but it has a strong nexus with the denial of dispossession, disclosed in the written objection of the opposite parties, filed by against the proposed amendment. The claim of dispossession of the petitioners, as well as the claim of long continuous and uninterrupted possession of subject land, since 1971, is a disputed question of facts and law, which cannot be decided without entering into trial of this case.

At the same time, the alleged claim of dispossession of petitioners, followed by claim for recovery of possession, though advanced at a later stage, since initiation of the suit, the same should not be refused, upon

merely viewing the objection raised by the opposite parties, claiming all along possession of the suit property, since 1971.

Since, the opposite parties incidentally raised the valuation of suit plot and consequent payment of court fees, liable to be deposited, the same may be raised, if necessary, upon filing a separate application for the purpose, challenging the maintainability of the suit.

Merely upon raising a challenge, disputing with the valuation of the suit plot together with alleged less payment of court fees, the prayer for amendment should not be refused.

This is a suit of 2008, in which there has been as many as three (3) amendments allowed already. Piecemeal amendment is undoubtedly not encouraging one. But the petitioners having set forth the date, in Para-12 of the proposed amendment, disclosing therein that on 30th June, 2021, the petitioners had been dispossessed by the opposite parties, which though challenged to be a fictitious one by the opposite parties, the same in the absence of evidence being recorded, would be very difficult to attract the mischief available under Order 6 Rule 17 C.P.C. Merely for the delay being caused in inviting the proposed amendment, the delay thus caused should not be critically viewed giving precedence to technicalities, for the peculiarities of the circumstances involved in this case.

Since an effort has been there to seek piecemeal amendment, the proposed amendment needs to be considered giving some substantial amount of costs.

For the discussions made hereinabove, the revisional application succeeds.

The impugned order is set aside subject to payment of costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to be deposited by petitioners to opposite parties within the second (2nd) week after reopening of the Puja Vacation of the court below.

It is, however, clarified that after deposition of costs within the period mentioned hereinabove, the amended copy of the plaint may be furnished within three (3) days thereafter, upon supplying the same to the opposite parties/defendants.

Learned court below is directed to accept the amended copy of plaint. The court below is further directed to fix a suitable date within one (1) week thereafter, permitting the opposite parties/defendants to furnish additional written statement, if any, in accordance with law.

This would not, however, prevent the court below to frame any additional issues, if any, in context with the proposed amended pleadings, as mentioned hereinabove.

Since, there has been sufficient period of time already lapsed, the logical conclusion of the suit may be reached expeditiously as possible, preferably before end of September, 2023.

The revisional application is thus disposed of.

Parties are directed to make communication of this order to the learned court below.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Subhasis Dasgupta, J.)