

S/L 4
12.12.2022
Court No.652
SD

CO 1034 of 2021

Gautam Mukherjee & Ors.
Vs.
Abani Mohan Goswami

Mr. Angshuman Chakraborty

...for the Petitioners.

Mr. Sujit Ruidas

Mr. Sukumar Sarkar

Ms. Madhumita Patra

...for the Opposite Party.

Affidavit of service filed by the petitioner in court today be kept with the record.

Being aggrieved and dissatisfied with the Order No.30 dated 16.01.2021 passed by the learned Additional District Judge, 1st Court, Hooghly in Title Appeal No.35 of 2016, present application has been preferred.

The petitioners contended that the opposite party herein filed Title Suit No.234 of 2010 before the learned Civil Judge (Junior Division), 2nd Court, Hooghly with a prayer for eviction of the original defendant Ranjit Mukherjee, since deceased, who is the predecessor-in-interest of the petitioners herein, from the property described in the schedule to the plaint.

The aforesaid suit was dismissed by the trial court by its judgment and decree dated February 15, 2016 on the ground that the description of the suit property in the notice to quit and in the schedule to the plaint does not tally with the description of the property mentioned in the sale deed filed by the plaintiff by which he had purchased the said

property. Accordingly, the trial court held that the notice under Section 106 of the Transfer of Property Act which discloses the cause of action, is not proper and as such, suit is not maintainable.

Challenging the aforesaid judgment and decree passed by the learned trial court, the plaintiff/opposite party filed the present Title Appeal No.35 of 2016. The petitioners alleged that after considerable lapse of time, when the said appeal was taken up for final hearing, the opposite party filed an application under Order VI Rule 17, seeking to amend the description of the property in the schedule to the plaint. The petitioners herein filed written objection against the said petition but the learned court below vide its impugned order dated 16.01.2021 has been pleased to allow the said application for amendment of plaint which was made at the final stage of hearing of the appeal.

Mr. Angshuman Chakraborty, learned counsel appearing on behalf of the petitioners, submits that the learned appellate court in its judgment dated February 15, 2016 had pointed out gross discrepancy in the description of the suit schedule property but the plaintiff/appellant/opposite party herein did not take any step though they became aware of such erroneous description of the suit property five years back. The appellate court while allowing the amendment of the plaint failed to consider that notice to quit discloses cause of action in an eviction suit and in the present case, the present amendment cannot be allowed as notice cannot be amended

and even after amendment of plaint, if any, notice will remain defective and as such, the proposed amendment is not at all necessary for the purpose of adjudication of the real controversy between the parties. Accordingly, petitioners have prayed for dismissal of the amendment application.

He also relied on a decision in support of his contention in the case of *Pandit Malhari Mahale vs. Monika Pandit Mahale & Ors.* reported in (2020) 11 SCC 549.

Mr. Sujit Ruidas, learned counsel appearing on behalf of the opposite party, submits that the proposed amendment is formal in nature and by way of amendment only the incorrect plot no.752 in the schedule to plaint is sought to be corrected by substituting the word 'plot no.652'. The proposed amendment if allowed will not cause any prejudice to the petitioners herein as the petitioners are the lessees in respect of their occupied room and even if the plot number has not been correctly written in the notice, the petitioners herein do not have any cause to prejudice because they are very much aware about their right in respect of the room under their possession and beside room in question, they are not in occupation of any other room under the plaintiff/opposite party. Accordingly, he submits that the court below has correctly allowed the proposed amendment for the ends of justice and the order impugned does not call for any interference.

On perusal of the impugned order, it appears that the learned trial court while allowing the aforesaid prayer for

amendment was pleased to held that execution of the decree could be made on the basis of description given in the plaint and as such, if the appellant is permitted to give the plot number corrected, there would not be any difficulty in execution of decree. The learned trial court further held that the purpose of notice is to give opportunity to the defendant to prepare himself well ahead about course of action to be taken by him. It is further observed that if it is not the case of the defendant that he is tenant under the plaintiff in respect of other property also. Accordingly, court below held that though there is mistake in quoting the plot number in the notice, defendant was not misled as he is tenant under the plaintiff in respect of only one property.

Learned trial court also held that in the written statement, there is evasive pleading regarding misquoting of plot number and there is no specific pleading touching the said issue and ultimately court below concluded that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and if proposed amendment is allowed, the nature and character of the proceeding would not be changed.

I have considered the submissions made by the parties and also considered the materials in the record.

During hearing, learned advocate appearing on behalf of the petitioner stressed much that the court below failed to consider that plaintiff failed to exercise due diligence at the appropriate stage in spite of having sufficient opportunity to do so. He further contended that plaintiff who seeks

amendment at the appellate stage has to explain as to why he could not have raised this point before the trial commenced despite exercising due diligence. As in the present case plaintiff failed to explain, proposed amendment is barred by the proviso to Order VI Rule 17 of the Code of Civil Procedure.

In **Mahila Ramkali Devi & Ors. vs. Nandaram & Ors.** reported in **AIR 2015 SC 2270**, Apex Court was pleased to observe as follows:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.”

In the present context, there is no reason for a landlord, nor there is any such plea that proposed amendment has been sought for acting mala fide, nor it is defence case that by making such blunder, plaintiff had caused injury to the defendant which cannot be compensated for by an order of cost.

In **Revajeetu Builders and Developers vs. Narayanswami** reported in **(2009) 10 SCC 84**, Supreme Court has laid down some basic principles, which ought to be taken into consideration while allowing or rejecting the application for amendment:-

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

What emerges from the aforesaid settled principles of law is that the power of the court to allow the amendment in pleadings differ from case to case and depends upon the facts of each case. If the application for amendment is mala fide, worthless and dishonest and is designed to delay legal proceedings, then the same should not be allowed but if the proposed amendment is bona fide, legitimate, honest and necessary for effective adjudication of the case and if it is found that the proposed amendment if allowed will not cause such prejudice to the other side, which cannot be compensated adequately in terms of money and also if allowed will not change basic nature and character of the case the court should not decline to amend the pleading because one of the fundamental object of considering the prayer for amendment is to minimize litigation between the parties.

In the present context, what is the real dispute to be adjudicated by the court below is whether the plaintiff is entitled to get a decree of eviction against the defendant in connection with the property mentioned in the schedule to the plaint or not and as such even if the proposed

amendment is allowed basic character of suit will remain a suit for eviction and recovery of khas possession.

In view of the aforesaid facts and circumstances of the case, I find that proposed amendment is required for the purpose of adjudicating the real controversy between the parties and as such, the court below has not committed any mistake in allowing the said petition for amendment and as such, I do not find any reason to interfere with the observation made by the court below in the impugned order.

Accordingly, CO 1034 of 2021 is dismissed.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)