

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CO 1576 of 2018
With
CAN 6101 of 2019

Sudarshan Das
Vs.
Kamalendu Mondal & Ors.

For the Petitioner : Mr Kushal Chatterjee
Mr. Debrup Choudhury

For the O.P. nos. 5 to 9 : Mr. Arijit Bardhan
: Mr. Anirban Ghosh
: Ms. Tapati Samanta

Heard on : 07.09.2022

Judgment on : 12.09.2022

Ajoy Kumar Mukherjee, J.

1. This is an application under section 227 of the Constitution of India against order No. 11 dated 17.04.2017 passed by learned Civil Judge Junior Division, 1st Court, Uluberia, in Title Suit No. 643 of 2015.

2. Petitioner as plaintiff had filed a suit against opposite parties wherein petitioner had prayed for right title interest over 'A' schedule property and had further prayed for a decree for rectification of the deed of sale, registered on

14.08.1996 and also for injunction restraining defendants no. 1 to 4 from alienating 2/3 share out of the 'A' schedule property, being Title Suit no 643 of 2015 which is now pending before learned Civil Judge (Junior Division) 1st Court Uluberia. In the said suit petitioner had filed an application for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure (CPC) and the said application for amendment was taken up for hearing by the Ld. Trial Judge and after hearing the parties, the learned Trial Judge by the impugned order, rejected the said application for amendment.

3. Mr. Kushal Chatterjee appearing on behalf of the petitioner submits that learned Trial judge has failed to appreciate that amendment as sought for, if allowed, will not change the nature and character of the suit. Learned Trial judge had erred in holding that plaintiff is intending to include new facts and events arising out of cause of action which is beyond the scope of the suit.

4. Supporting the impugned order Mr. Arijit Bardhan appearing on behalf of the opposite party No. 5 to 9 contended that trial court has rightly refused to amend the plaint as per the schedule of the petition as the proposed amendment, if allowed, will change the basic nature and character of the suit and as such the revisional application is liable to be dismissed.

5. On perusal of petition for amendment of plaint filed by plaintiff dated 20.01.2017, it appears that plaintiff has contended that from the written statement filed by defendant no. 5 to 9 it transpires that they have purchased 'A' schedule property through two register deeds, one from defendant no. 1 to 3 and another from defendant no. 4 by deeds dated 09.12.2015 and on 20.06.2018 respectively. It has further been stated in the amendment

application that plaintiff anticipated that the defendant no. 1 to 4 might execute and register deed in favour of defendant no. 5 to rest and it has appeared to be true when the said transfer in respect of 'A' schedule, during pendency of the suit has been disclosed in written statement. Therefore, challenging the propriety of execution of deed by defendant no. 1 to 4 as well as for introducing further facts ancillary to such transfer, they had prayed for amendment.

6. It appears from written objection filed by defendant no. 5 to 9 against prayer for amendment that answering defendants contended that the amendment application, if allowed, will change the character of the instant suit from a suit for rectification of plaintiff's own deed to a suit for cancellation of deed.

7. It is not in dispute that the impugned transfer by defendant No. 1 to 4 in connection with 'A' Schedule property in favour of opposite parties occurred subsequent to the institution of the instant suit. Opposite party's contention that the prayer for cancellation of the said deeds in this suits is premature as plaintiff has not yet obtained relief as sought for and that he can pray for cancellation of deeds by filing separate suit only after obtaining relief in this suit, is not sustainable in the eye of law.

8. The dominant purpose of allowing an amendment is to minimize the litigation. The relevant words in rule 17 are "alter", "amend" and "amendments". There is no express prohibition in order VI, rule 17 that conversion of a suit of one character into a suit of another character or inconsistent character provided it is necessary for the purpose of determining

the real question in controversy between the parties. Once it is found that proposed amendment has reasonable and substantial nexus with the matter in issue between the parties, it must hold the amendment to be necessary for the purpose of determining the real question in controversy between the parties. On perusal of plaint it appears that aforesaid sale by defendant no. 1 to 4 has reasonable and substantial nexus with the matter in issue that is plaintiff's prayer for rectification of deed. Question of limitation also involves unless plaintiff incorporate prayer for cancellation of deed in time. Accordingly an amendment of plaint even be allowed when it changes the nature and character of the suit to avoid multiplicity of the suits and for the purpose of determining the real question in controversy between the parties. In the present context there is no scope to say that proposed amendment, if allowed will cause injustice to defendant. In this context the observation made by the Trial Court that by way of amendment plaintiff is intending to include entirely new facts and events arising out of cause of action which is beyond the scope of instant suit is perverse and prejudicial to the interest of the parties.

9. Having considered the aforesaid facts and circumstances of the case the impugned order dated 17.04.2017 passed by learned Civil Judge (Junior Division) 1st Court, Uluberia is hereby set aside. Plaintiffs application for amendment of plaint under order VI Rule 17 CPC dated 20.01.2017 is accordingly allowed. Trial Court is directed to amend the plaint as per schedule of said amendment petition dated 20.01.2017 and after incorporating aforesaid amendment in the plaint to proceed with the suit in accordance with law.

10. C.O. 1576 of 2018 is thus allowed.

However 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.

(AJAY KUMAR MUKHERJEE, J.)