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C.O. 2329 of 2022

Smt. Debisree Arora

Vs

M/s. Govardhan Das P.A. & Anr

Mr. Aniruddha Chatterjee,
Mr. Saunak Bhattacharya,

... For the petitioner.

Mr. Surhid Sur,

... For the opposite party no. 2.

The subject matter of challenge in this revisional application is against the order dated 15th July, 2022 passed by learned Civil Judge (Junior Division), 3rd Additional Court, Alipore in Ejectment Suit No. 47 of 2014.

There are two parts in the impugned order; one dealing with the amendment application, and the another dealing with 151 application.

Mr. Aniruddha Chatterjee, learned advocate for the petitioner is aggrieved with the amendment being allowed in part, and disputes with the order passed under Section 151 of the CPC alleging that the extent of tenancy, being disputed by the tenant himself in the written statement already, submitted by the opposite parties/tenant, the Court below has erroneously disposed of 151 petition directing petitioner/plaintiff to unlock the padlock on the grill in front of the common bathroom and also remove the guardrail from the parking area.

Regarding the part amendment being allowed,

Mr. Chatterjee submits that though by the order impugned, the Court below allowed serial nos C,D,E in the schedule of the proposed amendment, but declined to amend the plaint with respect to rest of the serials, like serial nos. A,B, E to I

It is contended by Mr. Chatterjee that when the Court below has allowed some part of the proposed amendment, the rest part being consequential to serial nos. C, D and E, ought to have allowed in order to put an end to the litigation.

Per contra, Mr. Surhid Sur, learned advocate appearing for the opposite party no. 2/tenant submits that having accepted the part amendment being allowed, the petitioner/plaintiff has already furnished amended copy of the plaint, and as such the instant prayer seeking amendment as regards the rest part of the schedule of the amendment has become infructuous.

As regards the 151 application, Mr. Surhid Sur, learned advocate appearing for the opposite party no. 2 submits that the Court below has taken into account the documents produced by the opposite parties/tenant, like letter of creation of tenancy dated 24th March, 1964, together with the copy of the petition, under Section 144 of the CPC, filed by the petitioner/plaintiff.

It is thus submitted by opposite parties that

when the extent of tenancy has already been considered by the Court below, the order allowing 151 CPC requires no interference. Though, the opposite parties have submitted written statement upon disputing with the extent of tenancy, but when the Court below has arrived at a decision upon consideration of the documents produced, to reveal the extent of the tenancy, any averment taken by the opposite parties/tenant disputing with the extent of tenancy would be insignificant for the present purpose, learned advocate for the opposite parties argues.

Mr. Sur further submits that the order passed under Section 151 of the CPC is mandatory in nature, and an appeal ought to have been preferred against the decision passed under Section 151 CPC by the Court below.

Having considered the submissions of both the sides, it appears that there has been part amendment allowed by the Court below, at the same time declining to grant rest part of the schedule of proposed amendment.

As regards rejection of rest part of the proposed amendment, upon perusal of the schedule of the proposed amendment, it appears that those are however, not relatable to change of nature and character of the pending litigation. Those are

consequential of part amendment being allowed, and product of inadvertent mistake in plaint.

Regarding decision passed by the Court below under section 151 of the CPC, it appears that the Court below, though tried to ascertain the extent of the tenancy held by the opposite parties making consideration of the documents produced by the opposite parties/defendants, but there has been no consideration of the point taken by the opposite parties/defendants disclosed in para 9 of the written statement thereby disputing with the extent of the tenancy.

In a suit for eviction, extent of the tenancy being held has a great contribution to the executability of the decree, if any granted ultimately in the litigation. It requires adjudication, no doubt in context with the materials produced by the parties to this case.

The point thus raised in 151 C.P.C. appears to have not appropriately gone into by the court below, making consideration of all points inclusive of the averment disclosed in para 9 of the written statement, wherein the opposite parties/tenants themselves disputed with the extent of the tenancy.

In a situation like this there will be no prejudice caused to either of the parties to this case, if both the two applications are decided afresh, and that too in a time bound manner, that will sub-serve the purpose

of justice.

The impugned order is thus set aside, directing the court below to rehear the amended application, together with the application under Section 151 C.P.C., providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, preferably within three weeks after Puja vacation of the Court below, and decide the same afresh in accordance with law.

While endeavouring such exercise, both the parties are given liberty to produce their respective documents so that the points involved in both the two petitions may be appropriately decided in accordance with law.

The learned court below is thus required to decide the issue independently, without being influenced by any observation made hereinabove.

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

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)