

36
sandip
Ct. 18
18.08.2022

C.O. No. 3367 of 2018

Sri Susanta Kumar Dass & Anr.

Vs.

Sri Rabin Banerjee & Ors.

Mr. Souradipta Banerjee,

Ms. Fatima Hassan...

For the petitioners.

Affidavit-of-service filed on behalf of the petitioners
be kept with the record.

In spite of service, none appears on behalf of the
opposite parties.

The instant revisional application under Article 227
of the Constitution of India is at the instance of the
plaintiffs in a suit for ejectment and is directed against
Order No. 87 dated July 13, 2018 passed by the learned
Judge, 3rd Bench, Small Causes Court at Calcutta in the
said suit being Ejectment Suit No. 356 of 2007.

The plaintiffs, at the argument stage of the suit,
filed an application seeking amendment of the plaint. In
view of the stage of the suit, the learned Trial Judge by
the order impugned has dismissed the said application.

Mr. Banerjee, learned Advocate for the petitioners submits that although in the original plaint the date of service of the eviction notice upon the original defendant, the predecessor-in-interest of the present defendants was correctly mentioned but the plaint of the suit was once amended and in the amended plaint at paragraph 15 the said date has been wrongly mentioned as 25th July 2007 instead of the correct date of such service 25th August 2007. The plaintiffs by the proposed amendment wanted to rectify the said error.

He further submits that the plaintiffs to avoid future complication sought for the said amendment and the proposed amendment if allowed, parties need not adduce further evidence, therefore according to him, the learned Trial Judge was not justified in refusing the prayer of the plaintiffs on the ground that the suit has reached the stage of argument.

Heard Mr. Banerjee, perused the materials on record. It appears that in the original plaint it was alleged that the eviction notice was served upon the original defendant on 25th August 2007 but in the amended plaint at paragraph 15 the said date has been mentioned as 25th July 2007.

The plaintiffs in support of their case that such notice was sent to the original defendant who received it, have proved the postal articles i.e. postal receipt, acknowledgement due card etc.

The quality of evidence necessary to prove the service of eviction notice upon the defendant depends on the nature of challenge thrown to such service.

In the present case, Mr. Robin Banerjee, the son of the original defendant deposed as DW1. The said witness in his deposition has stated that he is not aware whether the eviction notice was ever served upon his father.

In view of such challenge to the service of the said notice upon the original defendant, the alleged date of service of the said notice has a secondary relevance inasmuch as the plaintiffs have to prove the service of the said notice upon the said defendant otherwise, i.e. on the basis of the materials already on record.

The date appearing at paragraph 15 in the amended plaint if allowed to remain on record, may breed future complications. The plaintiffs' anxiety on this score is therefore well appreciated as such to avoid such complications, the plaintiffs should be permitted to correct the alleged date of service of eviction notice upon the original defendant, appearing at paragraph 15 of the amended plaint.

The order impugned accordingly is set aside. The plaintiffs are permitted to amend the amended plaint of the suit only to the extent indicated above.

The plaintiffs are required to file the amended plaint within two weeks from the date. The plaintiffs since have been allowed to correct the alleged date of service of said notice only, defendants need not file any further pleadings, they are however permitted to argue on the issue of service of notice of eviction upon the original defendant, if their argument is already concluded.

C.O. 3367 of 2018 is allowed with the above terms without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)