

June 15, 2023
Sl. No.08
Court No.19
s.biswas

CO 158 of 2023

Mohini Adhikary

vs.

Swapan Adhikary and another

Mr. Arnab Roy

Mr. Satyam Mukherjee

Ms. Sayani Ahmed

... for the petitioner

Mr. Rwitendra Banerjee

... for the opposite party

The petitioner is the defendant in the Title Suit No.106 of 2019. The petitioner is aggrieved by the order dated September 1, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court Tamluk, Purba Medinipur.

By the order impugned, learned court below allowed the application under 6 Rule 17 of the Code of Civil Procedure filed by the plaintiffs. According to the learned court below, the application for amendment was for rectification of certain pleadings and incorporation of certain facts.

By the said amendment, the plaintiffs wanted to incorporate certain facts. An averment that the predecessor in interest of the plaintiffs was unwell even prior to execution of the deed of gift, was sought to be introduced. The statement that the said predecessor of the plaintiffs was sick for three to four years prior to his death, was already a part of the averments in the plaint.

The next fact which the plaintiffs wanted to incorporate was that the said predecessor, at the instigation of the defendant, had filed a criminal complaint against the plaintiffs and the case was ultimately dismissed.

Thirdly, another fact that, Title Suit No.3596 of 2015 was filed by the defendant to dispossess the plaintiffs and which was being contested by the plaintiffs by filing a written statement along with a counter-claim, was also sought to be introduced.

The amendment also included an averment that the alleged deed of gift which was the subject matter of challenge in the suit, had never been acted upon.

The learned court below allowed such amendments on the ground that facts were relevant for proper decision in the suit.

The learned court held that incorporation of such facts did not change the nature and character of the suit. No new case had been made out and the trial of the suit, had not commenced.

Mr. Roy, learned advocate for the defendant/petitioner submits that by incorporating the fact that the predecessor in interest of the plaintiffs had been unwell since long, even prior to the execution of the deed, amounted to demolition of the defence case. According to Mr. Roy, the admission already made by the plaintiffs was

withdrawn by the amendment. The amendment was also belated and due diligence had not been pleaded.

Having considered the nature of amendment, this Court is of the view that the pleadings have already been made in the suit that the predecessor in interest of the plaintiff, who had executed the deed of gift was seriously ill for three or four years prior to his death.

By the amendment, the statement that the predecessor in interest was unwell for a long time, even before the deed of gift was executed, was sought to be introduced. The correctness of the statements, is subject to evidence on trial. Merits of an amendment is not to be gone into at this stage while deciding whether the amendment should be allowed or not. There is also no admission on the part of the plaintiffs in the suit which was sought to be either withdrawn or destroyed by way of subsequent incorporation of certain facts in the plaint. The trial of the suit has not yet started and other facts with regard to a criminal case that was filed and the civil suit which was pending, are only elaboration of the facts stated in the plaint. The defence case has not been demolished and no prejudice has been caused to the defendant as the amendment did not amount to denial of any right that may have accrued in

favour of the defendant in the suit. The amendment also did not introduce a time barred claim.

Under such circumstances, this court does not find any reason to interfere with the order of the learned court below.

In the matter of ***Rajesh Kumar Aggarwal and others vs. K.K.Modi and others*** reported in ***AIR 2006 SC 1647***, the Apex Court held on similar lines and directed that the Court was not to go into the merits. The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

In the decision of ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.*** decided in ***Civil Appeal No. 5909 of 2022***, the Hon'ble Apex Court laid down the principles of governing amendment in paragraph 70 of the decision. The relevant portion is quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:-

- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
- (ii) to avoid multiplicity of proceedings, provided
 - (a) the amendment does not result in injustice to the other side,
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
- (ii) the amendment changes the nature of the suit,
- (iii) the prayer for amendment is malafide, or
- (iv) by the amendment, the other side loses a valid defence.
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.”

The petitioner shall also have a chance to file an additional written statement to the amended plaint to controvert the statements. Time to file amended plaint, if not already filed, is extended by four weeks from date. The additional written statement will be filed within four weeks thereafter or as per further direction of the learned court below.

The revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)