

24.04.2023
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FA 21 of 2021
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IA No.: CAN 2 of 2022
Sri Ratan Chandra Goswami
- Versus -
Sri Gopal Panja & Others

Mr. Goutam Das,
Mr. Arijit Bera
... for the Appellant.

Affidavit-of-service filed by the appellant be kept on record. No one appears on behalf of the respondents.

The present appeal has been preferred challenging the judgment and decree dated 13th December, 2018 passed by the learned Civil Judge (Senior Division), Ghatal, Paschim Midnapore in Title Suit no.13 of 2015. In connection with the appeal an application for amendment of plaint being CAN 2 of 2022 has been filed. Affidavit-in-opposition to the said application as called for earlier has not been filed.

Records reveal that the Title Suit no.13 of 2015 was a suit for partition and injunction preferred by the plaintiff/appellant herein against 15 defendants including the Executive Engineer, PWD (Roads), Midnapore and the State of West Bengal through the Collectorate, Paschim Midnapore and one *pro forma* defendant praying for a preliminary decree of partition

of the appellant's 05 decimals share, as detailed in Schedule 'B' in the suit property comprising of 64 decimals in L.R. plot no. 1317, as detailed in Schedule 'A'. The said suit was dismissed on contest against the defendant no.14 and *ex parte* against the rest. The appellant's case was that the entire Schedule 'A' property measuring 64 decimals belonged to one Sushil Kumar Chowdhury and others, who sold it to one Rohini Bala Porya (in short, Rohini) by a registered deed of sale, being no.2467 dated 1st July, 1961. Thereafter on different occasions, Rohini sold out the said 64 decimals of land to different purchasers, including one Madan Mohan Mondal and one Mohan Chandra Mondal, to whom she sold out 10 decimals by registered deed of sale being no.4516 dated 30th November, 1979. Subsequent thereto, Madan Mohan Mondal sold out his five decimals of land to the appellant by a registered sale deed being no. 1075 dated 14th March, 1983. It was further averred in the plaint that Midnapore – Ghatal PWD road runs along the western side of the suit land encroaching upon some portions of the suit land and as such, the State and its functionary had been made parties to the suit. The parties to the suit for convenience in their possession according to their purchase measured the same by a local *Amin* and prepared a map and consented to the

said demarcation. The area of the appellant's portion was shown in the annexed map and described in Schedule – 'B'. On 17th March, 2011 the defendant no.1, namely, Gopal Panja (in short, Gopal) encroached upon some portion of the appellant's demarcated land to make construction. Such encroachment was opposed and the defendant no.1 was asked to effect partition but he denied and as such the suit.

The defendant no.14 contested the suit by filing written statement stating *inter alia* that an area of 0.05 acre in the suit land was acquired in the year 1959 as per the provisions of the West Bengal Land (Requisition & Acquisition) Act, 1948. However, due to inadvertence the said portion was not included in Government Khas Khatian.

Considering the pleadings the following issues were framed:

- ‘1. *Whether the suit maintainable in its present form and prayer.*
2. *Is there any cause of action for filing this suit?*
3. *Whether the plaintiffs have title and possession in the suit property.*
4. *Are the plaintiffs entitled to get decree as prayed for?*
5. *To what other relief/reliefs, if any that the plaintiffs are entitled?*

The learned Court below in the impugned judgment arrived at a finding that the said 0.05 acre of land in the suit plot had been acquired by the Government. The claim of the defendant no.14 was thus limited to 05 decimals out of the entire 64 decimals and as such, the transfer of the suit land after publication of acquisition in 1959 was void only in respect of the acquired area to the extent of 05 decimals. Even if such quantum of land is excluded, there was no bar in passing title in respect of remaining 59 decimals of land. In the said conspectus, the learned Court below observed that the appellant had title and possession in the suit property less the portion occupied by Gopal and the issue nos. 2 and 3 were answered in his favour. However, as the extent of land of which the appellant was in possession either physically or constructively could not be established in the absence of appropriate description, the Court observed that unless and until such encroachment is removed from the suit land, it would not be possible to make partition and as such no decree for partition in the suit can be passed, particularly, when there was no prayer for recovery of possession.

Mr. Das, learned advocate appearing for the appellant argues that though the fact of unauthorised occupation of the defendant no.1 over a portion of the

land in schedule 'C' was averred, the appellant inadvertently did not pray for recovery of possession. The amendment, as sought for and detailed in paragraph 11 of the application would be necessary for adjudication of the *lis* and unless such prayer is allowed, the appellant would suffer irreparable loss. Such amendment, as prayed for, would also not prejudice the rights of the defendants.

He contends that appeal is a continuation of the suit. As such, the present application for amendment is maintainable and the Court adopting a lenient approach may allow the appellant's prayer, more so, when such failure to take steps for amendment of the plaint before the learned court below was neither intentional nor *mala fide*. In support of such contention Mr. Das has placed reliance upon the judgments delivered in the cases of –

1. *Mahila Ramkali Devi and Others Vs. Nandram (D) Thr. Lrs. & Others* [(2015) 13 SCC 132];
2. *Inderchand Jain (dead) through LRS. Vs. Motilal (Dead) Through LRs.* [(2009) 14 SCC 663] and
3. *Fatima Bibi Vs. Jakir Khan* [2019 (1) CHN (Cal) 759].

Heard Mr. Das and considered the materials on record.

As all relevant documents are on record, the appeal itself is taken up for final hearing upon dispensing all formalities.

It is well-settled that the Court has a wide discretion in the matter of amendment and the rules of procedure are intended to be a handmaid to the administration of justice and a party cannot be refused just relief because of some inadvertence on his/her part. In spite of arriving at a finding as regards the appellant's title to the property, in question, no relief could be granted by the Court due to the absence of the prayer for recovery of possession. It is not a case that amendment sought for is an outcome of a *mala fide* intention or that the same would have the effect of taking away any accrued right of the defendants.

For the reasons discussed above, we are of the opinion that the appellant should be granted an opportunity to amend the pleadings, prayers and the schedule of the plaint, as detailed in paragraph 11 of the present application.

Accordingly, the judgment and decree impugned in the present appeal is set aside. The matter is remitted to the learned Court below to consider the suit afresh upon taking into account the amendment, as detailed in the present application.

The appellant is granted leave to file amended plaint within a period of six weeks from date. The defendants would be at liberty to file additional written statement within a period of three weeks thereafter.

The learned Court below shall allow the parties to adduce additional evidence and dispose of the suit as expeditiously as possible taking into consideration the evidence already on record and further evidence, if adduced by the parties.

With the above observations and directions the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)