

July 7, 2023
Sl. No.8
Court No.19
s.biswas

CO 344 of 2023

Urmila Sau
vs.
Subhash Chandra Giri and others

Mr. Bidhayak Lahiri
Mr. Pradip Kumar Ghosh
Ms. Bhaswati Lahiri
... for the petitioner
Mr. Madan Mohan Roy
... for the opposite party nos.1 to 5

Affidavit of service, which has already been taken on record, indicates that all the opposite parties have been served.

Despite service, none appears on behalf of the opposite parties, apart from opposite party nos.1 to 5, even today.

The revisional application has been filed challenging the Order No.49 in Title Suit No.112 of 2014 dated August 18, 2022 passed by the learned Civil Judge (Senior Division), 1st Court, Contai, Purba Medinipur, who had rejected the application for amendment of the plaint.

By the amendment, the plaintiff wanted to incorporate additional facts with regard to the other plots and properties of which the plaintiff claims to be a co-sharer. The details as to how the plaintiff became a co-sharer in respect of such property was sought to be included in the pleadings. The application for amendment was filed after the issues were framed, but before the evidence started.

The learned advocate for the defendants opposes such prayer and submits that the plots which were sought to be incorporated in the plaint, had already been transferred to the defendants on the basis of a solenama, arising out of a partition suit.

The issue with regard to the incorporation of the above facts, in my view, does not change the nature and character of the suit. The plaintiff sought to introduce further plots of land and also the facts as to how the said plots of land continue to be joint properties. In order to avoid multiplicity of the proceeding and for proper adjudication of the suit, this court is of the view that the amendment should be allowed. Evidence has not yet started. The amendment sought to be incorporated does not appear to be ex facie time barred. Neither are the admissions in the plaint, nor contrary pleadings are sought to be incorporated.

Merits of the statements made in the amendment application, are not to be looked into at this stage. In the decision 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."

The situations when amendment should be allowed have been discussed elaborately in the decision of the Hon'ble Apex Court in the matter of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & anr.*** reported in **2022 SCC OnLine SC 1128**, as follows:-

"70. Our final conclusions may be summed up thus:

(ii) All amendments are to be allowed which are necessary for determining 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 correctness of the statements are triable issues and the same will be subject to proof by the plaintiff at the trial. The defendants will be given adequate opportunity to deal with such contentions by filing additional written statement and the learned court below upon completion of the pleadings, shall frame additional issues on the additional pleadings incorporated in the amended plaint. The fact that this amendment was brought in belatedly, is true. The injury suffered by the defendants on account of such delay, can be compensated with costs. Hence, cost of Rs.7000/- shall be paid to the contesting defendants, through their respective learned advocate on record in the learned court below in equal share. The learned advocates shall issue receipts upon receipt of the cost.

The learned court below, shall accept the amended plaint within a period of four weeks from the date of communication of this order upon being satisfied that the cost as directed by this court had been paid. The additional written statement shall be

filed within four weeks thereafter. The suit shall proceed in accordance with law.

The revisional application is thus disposed of.

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

(Shampa Sarkar, J.)