

S/L 20
30.03.2023
Court No.652
SD

CO 582 of 2020

Smt. Shyamali Biswas & Anr.
Vs.
Smt. Arati Roy & Anr.

Mr. Jahar Lal Ray

...for the Petitioners.

Ms. Sananda Ganguli

...for the Opposite Parties.

Challenging the order no.37 dated 04.12.2019 passed by the learned Civil Judge (Junior Division), 2nd Court, Alipore in Ejectment Suit No.81 of 2014, the present application under Article 227 of the Constitution of India has been preferred.

By the impugned order, the court below allowed plaintiffs' application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure. The petitioners contended that the opposite parties herein as plaintiffs have filed the aforesaid ejectment suit praying for a decree of eviction against them on the ground of reasonable requirement along with other grounds. The defendants entered appearance in the said suit and filed written statement denying all allegations made in the plaint and further defendants contended that the plaintiffs have got sufficient accommodation for their own use and occupation but they have falsely stated that they have no sufficient accommodation in the said premises. Accordingly, an application under Order XXXIX Rule 7 of the Code was filed by the plaintiffs and the advocate commissioner duly

conducted the commission work and the occupied portion of the plaintiffs were identified in presence of both the parties and their respective learned advocates.

Plaintiffs by way of amendment wants to cover up their lacuna in the plaint by saying that they have converted one room on the ground floor being the garage into a shop room under the name and style 'Sanjivani (Aastha Pharmaceuticals)' and started a business of medicine and thereafter filed said application. The defendants filed written objection but the learned court below after hearing both the parties was pleased to allow plaintiffs' prayer for amendment.

Learned counsel appearing on behalf of the petitioners submits that the court below had exceeded his jurisdiction in allowing the said prayer for amendment which was filed after filing the commission report which shows that he found a garage which is under the occupation of the plaintiffs. Though the prayer for amendment is usually dealt with leniency but present amendment must not be allowed at the costs of defendants right accrued in the suit as per local inspection commission report which was conducted in the presence of both the parties as well as the learned advocates appearing on behalf of both the parties. Learned court below ought to have examined the intention of the plaintiff who has converted the garage as shop room after the local inspection commission was held and he should have rejected the plaintiff's prayer for amendment.

Learned counsel appearing on behalf of the plaintiffs/opposite parties opposed such submission and contended that the plaintiffs only want to incorporate subsequent event which took place during pendency of the suit and the plaintiff has such prerogative to incorporate subsequent event in the plaint by way of amendment in order to substantiate his case.

He further submits that trial has not yet been commenced and as such, for effective and conclusive adjudication of the suit, the proposed amendment is required and as such, the court below has committed no wrong in allowing the application for amendment and the order passed by the court below does not call for any interference.

Considered the submissions made by both the parties.

On perusal of the schedule of amendment, it appears that the plaintiff by way of amendment wants to incorporate that in order to extend his business for better upliftment and for better earnings for their family, plaintiff no.2 started a business of medicine shop on the ground floor after converting the garage space into a shop room and their motor car is stationed on the road side in front of the building due to scarcity of space which is getting damaged day by day. Though, learned commissioner has submitted in his report that there is a garage under the occupation of plaintiff in the ground floor but learned commissioner is not supposed to report in respect of possession of the parties as

the object of commission work can never be for fishing out evidence.

Be that as it may, even if such conversion of garage into a medicine shop has been made during the pendency of the suit, there is nothing wrong in incorporating the said fact in the plaint by way of amendment for effective and conclusive adjudication of the suit and such amendment, if allowed, will not change the nature and character of the suit as the suit will remain a suit for eviction of premises tenant.

Moreover at the stage of dealing with amendment application, court is not supposed to deal with correctness of the case in amendment nor court is required to record a finding on the merit of amendment. That being the position, the case which sought to be set up by the proposed amendment is an elaboration about plaintiff's case of reasonable requirement. It is impermissible for the High Court, while exercising its jurisdiction under Article 227 of the Constitution of India to enter upon merits of the case as to whether such alleged conversion of garage into a shop room was made in terms of plaintiff's *bonafide* need or not.

Considering the same, I do not find anything to interfere with the order impugned.

Accordingly, C.O. 582 of 2020 is dismissed.

However, both the parties will be at liberty to pray for further local inspection commission before the court below in support of their respective contention about the said space and in the event of filing such application by the parties, the

court below will dispose of such application in accordance with law.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)