

15.06.2023
Sl. No.9(DL)
srm

C.O. No. 605 of 2023
Madhumita Das Hazra
Versus
Ramu Das @ Dustu & Ors.

Mr. Saibal Acharyya,
Mr. Krishna Das Podder,
Mr. Pradip Paul,
Ms. Renesa Dey

...for the Petitioner.

Mrs. Usha Maity,
Ms. Anita Khatri,
Mr. Sakya Maity

...for the Opposite Parties.

This revisional application is restricted to the portion of the order dated February 7, 2023 passed in Title Suit No.453 of 2022 by the learned Civil Judge (Junior Division), 1st Court at Paschim Medinipur, in so far as the same relates to allowing an application for amendment of the written statement. The other part of the order of injunction in the nature of *status quo* is an appealable order and this Court is not interfering with the same.

The petitioner is the plaintiff in the Title Suit No.453 of 2022. The suit was filed for declaration and injunction against the opposite parties on the ground that the defendants had threatened to dispossess the plaintiff from the suit property

and started other illegal activities thereon. The defendants were desperate in nature and it was apprehended that the nature of the suit property would be changed. It was apprehended that irreparable loss and injury would be caused to the plaintiff. Thus, the plaintiff sought for a declaration of right, title and interest in respect of the suit property along with a decree for permanent injunction against the defendants.

The defendants filed their written statement and denied the allegations. It is the specific case of the defendants that the plaintiff did not have physical possession of the suit property and the suit property was not surrounded by a *pucca* boundary wall. That the plaintiff had adopted a roundabout way to evict the settled possession of the defendants for the past 50 years as tenants. That the plaint was drafted without mentioning the actual area of the disputed property situated at RS Plot Nos.1608 and 1609. The defendants and other persons had specified demarcated area of their tenanted rooms on the vacant land situated at the southern corner (roadside) of the suit property being RS Plot Nos.1608 and 1609.

The defendants also filed as amendment application. The defendants sought to rectify the written statement and counter-claim by correcting the LR plot numbers of mouza Miyabazar by deleting LR Plot Nos.1043 and 1044 and

inserting LR Plot Nos.2442 and 2443 corresponding to RS Plot Nos.1608 and 1609. According to the defendants, such mistake was *bona fide* and the amendment, if allowed, would not change the nature and character of the suit and would not amount to mutually destructive pleadings.

The suit proceeded on the basis that RS Plot Nos.1608 and 1609 were the suit properties. From the schedule of the plaint, it appears that corresponding to RS Plot No.1608, the LR plot was 2442 and corresponding to RS Plot No.1609, the LR Plot was 2443.

The suit property as described in the schedule of the plaint is as follows:

“District – Paschim Medinipur, P.S. Midnapore, Mouza – Miyabazar, J.L. No.173, Old L.R. Khatian No.2596, Present L.R. Kh. No.4925.

R.S. Plot No.	L.R. Plot No.	Nature Bastu measuring an area 2.211 decimals along with lod one storied asbestos shaded structure 150 sq.ft.
1606	2440	
1611/2044	2447	
1611	2446	
1610	2445	
1609/2043	2444	
<u>1609</u>	<u>2443</u>	
<u>1608</u>	<u>2442</u>	
1607	2444	

Butted and bounded by :-

North – Rest portion of the plot.

South – 3 ft. passage

East – 20 ft. wide road

West – Plot No.1607''

Thus, the LR plot numbers are available from the schedule of the plaint and the plaintiff has proceeded against the defendants for declaration and permanent injunction in respect of the said plots. The counter-claim of the opposite parties is in respect of the portion of the RS Plot Nos.1608 and 1609, the LR plot numbers of which, they subsequently wanted to rectify by correction of the schedule.

Although the learned Advocate for the petitioner refers to a decision of a Court with regard to the claim of the parties in respect of the LR Plot Nos.1043 and 1044, this application for amendment of the written statement, in my opinion, is only for rectification of the LR plot numbers. From the plaint case, it is apparent that the plaintiff has proceeded against the defendants for declaration of title in respect of those plots and the defendants were contesting the suit by claiming tenancy in respect of those RS plots. However, the correctness as to whether the RS Plot Nos.1608 and 1609 correspond to LR Plot Nos.1043 and 1044 or to LR Plot Nos.2442 and 2443 will be decided at the trial upon evidence. Similarly, the claim of the

defendants that they are tenants over a portion of LR plot Nos.2442 and 2443 corresponding to RS plot Nos.1608 and 1609 respectively, are matters of proof on evidence. Correctness of the averments in the amendment application will always be subject to evidence and the parties are at liberty to adduce evidence and pray for other reliefs at the appropriate stage for identification and demarcation of the LR plots and also seek production of the RS and LR records for such demarcation and proper appreciation of the actual situation. All contentions are subject to proof.

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."

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 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.”

Under such circumstances, the revisional application is disposed of without any interference as the amendment has been rightly allowed.

The petitioner will be at liberty to file re-joinder to the amended written statement.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)