

**IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE**

**CO 972 of 2020  
Smt. Binapani Maity & Anr.  
Vs  
Debashis Payra**

For the petitioners : Mr. Ramdulal Manna  
Mr. Nirmalendu Patra  
Mr. Debnarayn Patra  
Mr. Sayan Mukherjee  
Ms. Payel Khanra

For the Opposite Party : Mr. Sandip Das

Heard on : 14.03.2023

Judgment on : 27.03.2023

**Ajoy Kumar Mukherjee, J.**

1. Being aggrieved and dissatisfied with the order no. 18 dated 06.02.2020 passed by learned Civil Judge (Senior Division) Kakdwip, South 24 Parganas in Title Suit No.22 of 2019 present application under Article 227 of the Constitution of India has been preferred. By the impugned order learned court below has been pleased to allow plaintiff's prayer for amendment of the plaint. In the prayer for amendment of the plaint plaintiff has sought to incorporate that in the plaintiff's purchase deed schedule mentioned suit property, though

the C.S. Plot No. has been correctly mentioned as 1529, being deed no. 4993 but corresponding to said plot no. 1529, the R.S. Plot no. has been wrongly written in the deed as 1796 instead of 1523. In fact said plot no. 1796 is owned by one Sneholata pyke and others and is non-suited property and said plot no. 1796 was never owned by Sachidananda Maity or his predecessor. In fact by the said deed, C.S. plot No. 1529 corresponding to R.S, plot No. 1523 in southern portion measuring 0.50 acres of land was transferred by Sachidananda Maity in favour of plaintiff's father and in the LR. Record of Rights plaintiff's name has been duly recorded.

**2.** Brief background of the plaint case is that the suit plot being C.S. Plot No. 1529 having an area of 0.98 acre of land originally belonged to two brothers namely Prasanna Kumar Maity and Biswanath Maity. Subsequently Biswanath Maity died as bachelor leaving behind said Prasanna Kumar Maity as his only heir. At the time of R.S. Settlement the said C.S. Plot No. 1529 having an area of 0.98 acre was renumbered as R.S. Plot no. 1523 having an area of 1.54 acre under R.S. Khatian No. 188. After the death of Prasanna Kumar Maity the said land have been inherited by his three sons Santosh, Satish, and Sachidananda as per the law of inheritance. Said land was partitioned in the year of 1959 among the said three heirs amicable by meats and bounds. By way of partition said Sachidnanda was allotted an area of 0.50 acre(southern part) out of 1.54 acre and Santosh was allotted rest 1.04 acre (northern part) and other heir Satish Kumar got non suited land.

**3.** Plaintiff's further case is on 05.06.1963 by virtue of a registered deed of sale being no. 4993 for the year 1963, said Sachidananda transferred his share measuring 0.50 acre (southern part) in favour of father of the plaintiff. In the L.R. Record of rights the land being plot no. 1523 having an area of 0.50 acre has been duly recorded in favour of plaintiff's father and after the death of plaintiffs' father, the plaintiff became owner of said plot of land. Similarly the other heir Santosh Kumar Maity transferred 0.25 acre out of 1.04 acre in plot no. 1523 by virtue of registered deed of gift, in favour of Binapani Maity and in the L.R. record of rights, her name was duly recorded in khatian no. 2328 and she has been possessing the said land by constructing dwelling house. Santosh subsequently by another deed transferred 0.39 acre out of said 1.04 acre in favour of Satinath Maity and Santosh also transferred an area 0.20 acre out of 1.04 acre in favour of Rajesh Maity and another area of land measuring 0.02 acre in the eastern part out of said 1.04 acre in favour of said Rajesh Maity.

**4.** Plaintiffs further case is that said Santosh had no possession and had no right to transfer said 0.02 acre of land in eastern part out of 1.04 acre as pathway in favour of Rajesh Maity in the eastern part of the plot no. 1523. After death of Santosh rest area of 0.18 acre out of 1.04 acre has been inherited by his four sons. Plaintiffs further case is taking advantage of absence of the plaintiff, 0.01 acre land from the eastern portion of the plot no. 1523 has been encroached by the defendant/petitioner and he asked defendant/petitioner herein to hand over the encroached portion of land in plot no. 1523 having an area of 0.01 acre in favour of plaintiff, but the

defendant/petitioner herein refused to do the same and for which the suit was filed.

**5.** Defendant/petitioners herein filed written statement against the contention made in the plaint and denied all the statements and allegations and prayed for dismissal of the suit. Plaintiff/opposite party during pendency of aforesaid T.S. 22 of 2019 filed an application for amendment of plaint to the above extent.

**6.** Petitioner herein opposing prayer for amendment contended that Sachidananda Maity had no right title and interest on the lands as mentioned in the deed of sale being no. 4993 for the year of 1963 as Sachidananda Maity never owned plot no. 1796 and said plot no. 1796 is not corresponding to plot no. 1529. Accordingly petitioner contended that the deed of sale being no. 4993 for the year of 1963 is a clear case of practising fraud upon registering authority which was subsequently tampered by the plaintiff/opposite party, without making deed of confirmation or deed of rectification. Petitioner further submits that the defendants are in possession of the eastern portion of the plot of land in question being plot no. 1523 having an area of 0.02 acre constructing pathway and also planting trees and question of encroachment does not at all arise. The defendant/petitioner obtained the said land by virtue of deed of gift for the year 1982 and deed for the year of 2007.

**7.** Learned counsel appearing on behalf of the petitioner further submits that in the above backdrop during pendency of the suit, plaintiff has come out with aforesaid application for amendment with an intention to take away the

admission made by the plaintiff in his plaint, and in order to change the nature and character of the suit. However the court below by the impugned order has allowed plaintiffs aforesaid application for amendment.

**8.** In fact by way of amendment, the admission sought to be taken away by the plaintiff in his plaint would be detrimental to the defendants' interest and would encourage the plaintiff in the suit who has suppressed material fact and practiced fraud upon the court. He further submits that the learned court below has committed mistake in allowing the petition for amendment and failed to appreciate that the proposed amendment sought to introduce a stand diametrically opposite to the original pleading and amounts to withdrawal of admission, which effectively displaces the case of the defendant.

**9.** Petitioner/defendants in support of their contentions relied on:-

**(i) 2019 (1) ICC 646 (Cal)**

**(ii) (2009) 10 SCC 84**

**(iii) (2016) 3 WBLR (Cal) 85**

**10.** Leaned counsel appearing on behalf of the plaintiff/opposite party raised objection contending that the court below was quite justified in allowing the said amendment as the proposed amendment is very much necessary for effective and conclusive adjudication of the suit. The petitioners' allegation of taken away admission is baseless and by way of amendment plaintiff has not sought for deletion of any kind of alleged admission. Accordingly he has prayed for dismissal of the present application.

**11.** Considered submissions made by both the parties and also perused the copy of the plaint, the application for amendment as well as written objection filed by defendants/petitioners. In the written objection filed by petitioners herein against amendment application, petitioner nowhere taken the plea that by way of amendment, plaintiff is trying to take away any admission, nor made any specific plea as to what admission plaintiff has sought to be taken away by way of amendment. Plaintiff in his plaint in paragraph 3 has categorically stated that by way of amicable partition Sachidnanda Maity got 0.50 acre of land in the extreme southern side exclusively measuring 0.50 acre and Santhosh Kumar Maity exclusively got 1.04 acre in the suit plot no. 1523 in the northern portion of the land. His further case in the plaint is that Santosh Kumar Maity sold 25 satak in favour of Binapani Maity from the adjacent northern side of suit plot and said Santosh Kumar Maity also sold 20 satak of land from north-middle portion and 02 satak of land from adjacent eastern side of plaintiff suit plot in favour of defendant no. 2 Rajesh Maity. Plaintiff's specific case is since 1959 Santosh Kumar Maity had no right title interest in the southern part 0.50 acre of land and he has no right to transfer 0.02 acre from plaintiff's 0.50 acre of land in southern side in favour of Rajesh Kumar Maity. Now by way of proposed amendment plaintiff want to incorporate that Sachidananda had sold 50 satak of land from plot no. 1523 in the southern side in favour of plaintiff's father. Defendant/petitioner in their written objection against the amendment petition has only stated that as per deed for the year 1963 the plaintiff had purchased plot no. 1796 and they had never

purchased plot no. 1523 and as plaintiff has purchased aforesaid plot no. 1796 so they did not make any attempt to correct the plot no. in the aforesaid deed for last 56 years and as such the plaintiffs are estopped from making any amendment in the plaint.

**12.** Considering the facts and circumstances of the case I find, court below has held that by way of proposed amendment plaintiff is trying to take the plea that it has been wrongly pleaded that defendant no. 1 had access to the village pathway on the southern side which should actually be on the northern side and the contents of the plaint suggest that it was all along plaintiffs case that there has been an encroachment of some portion of land from the eastern side of his southern 0.50 acre land and the sketch map annexed to the plaint, points out that on the southern side there is a PWD Bus route and there is no indication of any village pathway. Court below accordingly held that in such view of the matter, it cannot be said that there has been any admission in the plaint by the plaintiff to the effect that the defendants are using the land on the southern side of suit plot for having access to village pathway. Furthermore though in the written objection defendant has stated that the plaintiff actually purchased plot no. 1796 and not plot no. 1523 but they have not denied Sachidananda's title in respect of C.S. plot no. 1523 and they have also nothing to show that plot no. 1796 corresponds to C.S. Plot no. 1529 and accordingly there is no basis of taking the plea that though plaintiffs predecessor had purchased Sachidananda share in the suit property but they have purchased plot no 1796 as mentioned in the deed as according to the

plaint case plot no. 1796 does not correspond to C.S. plot no. 1523 and plot no. 1796 never belonged to Sachidananda.

**13.** On perusal of prayer of plaint, it is clear that real dispute between the parties is whether defendants/petitioners have encroached 'ka' schedule land to the plaint measuring 01 satak corresponding C.S. plot No. 1529 in the eastern side towards north south direction. Plaintiff in his prayer for amendment has not prayed for deletion of any statement. It is true that well settled principle of law is admission made by a party in pleading cannot be allowed to be withdrawn by way of amendment but at the same time explaining of admission of a party is not impermissible. In fact withdrawal of admission means deletion of statement relating to such admission and or substitution of one set of fact in place of fact already exists in the pleading or in the evidence, which is not the case in the present context.

**14.** In the present case, there is nothing to show that if the proposed amendment is allowed. It will take away any valuable right accrued by the defendant. The proposed amend if allowed will also not constitutionally or fundamentally change the nature or character of the suit as the suit will remain, even after proposed amendment, over the issue as to whether defendant has encroached plaintiff's 0.01 acre of land or not. There is also nothing to show that the proposed amendment is *malafide* nor the amendment is such a nature which may cause prejudice to the defendant to such extent, which cannot be compensated adequately in terms of money. On the contrary proposed amendment appears to be required to adjudicate real controversy

between the parties effectively and conclusively, as there is a serious dispute between the parties as to whether relevant 'ka' schedule mentioned properly to the plaint is owned by plaintiffs or by the defendants and the real controversy test as appearing in order VI, rule 17 is whether such an amendment is necessary to decide the real dispute between the parties, the answer of which is affirmative in the present context.

**15.** In view of aforesaid discussion I do not find any material irregularity or perversion in the order impugned and as such the order impugned does not call for any interference by this court.

**16.** C.O. 972 of 2020 is dismissed.

There will be no order as to costs.

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

**(AJAY KUMAR MUKHERJEE, J.)**