

10-02-2023

C.O.750 of 2021

Sri Monotosh Pal

vs

Smt. Menoka Ghosh & Ors.

Mr. Syamal Kumar Das

Ms. Smita Pal

.....For the Petitioner

The record is taken up for Orders.

The petitioner before this Court is the plaintiff in Title Suit No. 259 of 2015 pending before Learned Civil Judge (Junior Division) 2nd Court Serampore Hooghly and is aggrieved by the Order passed by the Learned Trial Judge in dismissing the petition for amendment.

The case of the petitioner/plaintiff may be summed up thus:

1. The petitioner filed a title Suit before the Learned Court of Civil Judge Junior Division 2nd Court, Serampore, Hooghly for Declaration and Injunction against the opposite parties/defendants.

2. The opposite parties/defendants did not appear at the time of hearing of the said

suit and did not file the written statement within the statutory period of time.

3. After the lapse of statutory period for filing of the written statement the defendants/opposite parties, made one application under Section 151 of the Code of Civil Procedure dated 28.08.2017 before the Learned Court below for acceptance of written statement but the same was rejected by the Learned Court below on the ground that no cogent reasons were shown in the said application for delay in filing the written statement.

4. On 2-08-2018 the petitioner filed a petition in the Learned Court below under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for incorporation of correct L.R. and R.S. plot Numbers. Due to hurriedness and inadvertence at the time of filing of the above Suit, in the schedule the R.S. Plot Number has been wrongly typed as R.S. Plot No.87 instead of 487 and furthermore the L.R. Plot Number of the corresponding R.S. Plots have not been incorporated there.

5. The said application was taken up for hearing by the Learned Court below and the

Learned Court has been pleased to pass an Order allowing the amendment in part as there was clear ambiguity in filing the said Amendment petition and accordingly as per Order of the Learned Court below Amended plaint has been filed only mentioning the correct R.S. Plot Number.

6. After filing the above mentioned Suit the defendants/opposite parties being aware of the fact that the plaintiff/petitioner or his vendors did not incorporate their names in the L.R. Records of Right, hurriedly recorded their names in the L.R. settlement and Record of Rights showing their Worrison Certificate and suppressing the fact that their predecessors had already transferred their property and after going through the said Record of Right the petitioner came to learn that the R.S. Plot No-487 has been changed to L.R. Plot No. 525 measuring an area of 1 acre and the devolution

7. of the property have not been properly described in the plaint.

8. On 21-12-2019 the petitioner filed a petition in the Learned Court below under Order 6 Rule 17 read with Section 151 of the

Code of Civil Procedure praying for amendment of the plaint.

9. By Order dated 23-02-2021 the Learned Court below was pleased to reject the prayer for amendment made by the petitioner on 21-12-2019.

10. The petitioner being aggrieved by the order dated 23-02-2021 passed by the Learned Court below has come up with instant Revisional Application.

Pursuant to the admission of this application notice was issued upon the opposite parties. As none appeared for the opposite parties in spite of service of notice the hearing of the application was taken up in their absence.

It is the contention of the petitioner that the proposed amendment is necessary for proper adjudication of the suit and will not change the nature of the case. It is further contended by the petitioner that the Learned Court has rejected the prayer for amendment without appreciating the fact that changes in plot of Land, from R.S. to LR is required to be incorporated in the schedule of plant for proper adjudication of the suit. Heard Learned Advocate for the petitioner. Perused the petition filed and materials on record. Learned Advocate for the petitioner submits that although proposed amendment does not change the nature of the suit but the same was refused. Learned Advocate further draws attention to the schedule of proposed amendment and submits that the amendments are required for proper adjudication of the suit.

Upon perusal of the Order passed by the Learned Trial Judge it appears that the Learned Judge while disposing the petition for

Amendment filed by the petitioner/plaintiff observed as follows:

‘Therefore this Court is of the view that if this amendment is allowed this amendment would also lead to change nature and character of the suit. It is a settled proposition of Law that no amendment can be allowed if it leads, to a change in nature and character of the suit. In this case it is found that if the amendments sought for are allowed it would completely change the nature and character of the suit which would defeat the purpose of the suit. The appropriate relief in such a case does not lie in seeking amendment of the original plaint.’

Now in Order to decide as to whether the petitioner’s prayer for amendment should be allowed it is necessary to consider the provisions contained in Order VI Rule 17 of the Code of Civil Procedure, some judicial pronouncements in this regard, and the amendment sought for by the petitioner.

Order VI Rule 17 of the Code of Civil Procedure provides as follows:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the Trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of Trial.

Thus upon reading the provision of Order VI Rule 17 of Code of Civil Procedure it will appear that amendment should be allowed when it is necessary for the purpose of

determining the real question in controversy between the parties.

In the case of Ramesh Kumar Agarwal vs Rajmala Exports (P) Ltd. Reported in (2012) 5 SCC P-33 7 the Hon'ble Supreme Court observed as follows:

‘While deciding the application for amendment ordinarily the Court must not refuse bona-fide legitimate honest and necessary amendments and should never permit mala-fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either Party to alter or amend his pleadings in such manner and in such terms as may be just. Amendment

Cannot be claimed as a matter of right and under all circumstances but the Courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule, particularly in cases where the other side can be

Compensated with costs. Normally amendments are allowed in the pleadings to avoid multiplicity of litigations.

In the case of Dilip Kaur Vs Major Singh reported in AIR. 1996 P and H (P-107) the Hon'ble Punjab and Haryana High Court observed as follows:

- i) All amendments should be allowed which are necessary for determination of the real controversies in the suit.
- ii) The proposed amendment should not alter and be a substitute of the cause of action on the basis of which the original lis was raised.
- iii) Inconsistent and contradictory allegation in negation to the admitted position of facts or mutually destructive allegations of facts would not be allowed to be incorporated by means of amendment.

- iv) Proposed amendment should not cause prejudice to the other side which cannot be compensated by means of costs.
- v) Amendment of a claim or relief barred by time should not be allowed.
- vi) No amendment should be allowed which amounts to or results in defeating a legal right to the opposite party on account of lapse of time.
- vii) No party should suffer on account of the technicalities of Law and the amendments should be allowed to minimise the litigation between the parties.
- viii) The delay in filing the petition for amendment of the pleadings should be properly compensated by costs.
- ix) Error or mistake which if not fraudulent should not made the ground for rejecting the application for amendments of pleadings.

The Hon'ble Patna High Court in the case of Pramada Prasad vs Sagarmal reported in AIR-1954 Patna 439 observed

That broadly stating there is no injustice in granting the amendment if the opposite side can be compensated in costs.

In the instant case the petitioner/plaintiff in the Schedule showing proposed amendment has sought to describe as to how he acquired the suit property. The petitioner also sought to explain that due to the failure of the plaintiff/petitioner to get his name mutated the opposite parties got their names mutated in spite of being aware of the litigation and the fact that the predecessor of the defendants has sold the suit property to the plaintiff by suppressing these facts. The other paragraphs of the proposed amendments relate to deletion of some words and

Substitution by incorporating some other words, and change of schedule appearing at pg-5 of the plaint.

Now upon considering the nature of suit and the amendments proposed by the Petitioner/plaintiff it is clear that the

Petitioner sought to give a brief description of source of the suit property, the subsequent event during pendency of suit regarding defendants mutating their names by suppressing the purchase of suit property by petitioner/plaintiff from predecessor of the opposite parties which are relevant facts for adjudicating the suit. It is a well settled principle of law, that parties to the suit shall not suppress any material facts before the Court which comes to their knowledge. In the event disclosing of material facts is not done due to inadvertence or due to lack of knowledge the same may be brought on record by way of amendment with the

leave of the Court. Thus leave for Amendment should be allowed if it is necessary for determination of real controversies in the suit. Now the point to be decided is whether the proposed amendment will change the nature and character of the suit. Upon perusal of the plaint it will appear that the plaintiff/petitioner has stated in

Paragraph 1 and 2 of the plaint about the source of devolution of the suit property upon him and in the prayer for amendment the petitioner has confined himself to the devolution of suit property by giving specific details. With regard to mutation of names by the defendant it is a subsequent fact during the pendency of suit as pleaded by the plaintiff/petitioner in the petition for amendment thus there was no scope to incorporate the same in the plaint and the act of mutation relates to the steps taken with regard to suit

property by one of the parties to the suit. Thus this act also relates to suit property. Nowhere in the proposed amendment the petitioner prayed for addition or alteration of relief claimed earlier. Thus it cannot be said that the nature and character of the suit will change.

Now with regard to the observation of the Learned Trial Judge that no necessary document is furnished about incorporating the L.R. Dag No-518 to be corresponding to Dag No-487 and LR Dag No-525 to be corresponding to RS Dag No-494 respectively although it is contended by the petitioner/plaintiff, that relevant documents were filed as annexed in the Revisional Application but as the amendment proposed incorporation of 2 Dag numbers corresponding to the existing Dag numbers this Court is of the view that as the proposed amendment

does not relate to vesting of any right of the plaintiff/petitioner but merely change of identification of suit property in the records of Land and Land Reforms Authority non-production of document at the time of filing amendment petition is not fatal as the same can be filed at subsequent stage, in accordance with law. It is also pertinent to mention that the proposed amendments were made at the time when the trial did not commence, the injunction application was pending for disposal, and the written statement filed by defendant/opposite parties was not accepted. Thus

considering the nature of the suit, the amendments prayed for by the petitioner, the stage of the proceedings and the judicial pronouncements as mentioned above this Court is of the view that the Learned Trial Judge erred in rejecting the

application for Amendment made by the petitioner under Order VI Rule 17 of the Code of Civil Procedure. Hence the Order passed by the Learned Judge cannot be sustained and the same should be set aside.

In the facts and circumstances as discussed above this Revisional Application stands allowed. The impugned Order no-49 dated 23/02/2021 passed by Learned Civil Judge (Junior Division) 2nd Court Serampore Hooghly in T.S. 259 of 2015 is set aside. The prayer for amendment made by the petitioner in petition under Order VI Rule 17 on 21-12-2019 is allowed. The petitioner is permitted to carry out the proposed amendment as mentioned in the schedule of the petition dated 21-12-2019 and file amended plaint by three weeks from date.

This Revisional Application stands
disposed.

(Biswaroop Chowdhury,J)