

Item No. 1
09.10.2023
Court. No. 19
GB

C.O. 960 of 2023

Sri Premankur De
Vs.
Smt. Sandhya De & Ors.

*Mr. Jayanta Das,
Ms. Soumita Ghosh*

...for the Petitioner.

*Mr. J.K. Bhattacharyya,
Mr. Aswini Kr. Bera,
Mr. Arijit Bera*

...for the Opposite Parties.

The revisional application arises out of an order dated January 25, 2023, passed by the learned Civil Judge (Junior Division), 3rd Court at Paschim Medinipur in Other Suit No.814 of 2017.

By the order impugned, the learned court below refused to recall an order allowing an application for amendment of the plaint ex parte.

The learned advocate for the petitioner/defendant submits that the order dated March 8, 2022 was passed without granting any opportunity to the defendant to contest the proceeding. According to the petitioner, although the learned advocate was appointed, the learned advocate was not in a position to attend the court. Hence, the ex parte order of amendment should be recalled.

This Court has perused the plaint. Other Suit No.814 of 2017 is a suit for eviction of a licensee under Section 106 of the Transfer of Property Act. The plaint case is that Deba Prasad De was the owner of the property. Deba Prasad De died on April 20, 2017 leaving behind his widow and three

daughters. The defendant was the nephew of Deba Prasad De who was permitted to use a covered verandah in front of the suit premises. Such permission was withdrawn by Deba Prasad De on December 25, 2016 and the defendant was asked to vacate the suit premises. The defendant had assured Deba Prasad De that the suit premises would be vacated within February 2017. After the death of Deba Prasad De, the heirs/plaintiffs requested the defendant/petitioner to quit and vacate the verandah. A complaint was also lodged with the Debra Police Station on anticipation of illegal activities by the petitioner/defendant in the suit property. The defendant was also trying to occupy other rooms in the suit house by taking advantage of the fact that there was no male member in the family. By trying to take possession of the other rooms, the defendant was trying to non-suit the plaintiffs. Specially because the plaintiffs were living either at Midnapore and Maharashtra, the defendant was taking full advantage of the absence of the plaintiffs. That the defendant did not have any right to stay in the premises. The defendant was a trespasser. The plaintiffs were constrained to file the suit for eviction of a trespasser. The schedule of the property is quoted below:-

“SCHEDULE

Dist-Paschim Medinipur, P.S. Debra, Mouza-Hamirpur, L.R. Kh. No.74/1, Plot No.233/440-measuring 0.03 dec. Plot NO.9/430-measuring 0.07 dec.

Total 10 dec. upon which one storied pucca building of which northern room with covered verandah.”

The defendant filed the written statement, inter alia, denying all the averments in the plaint. The specific case of

the defendant/petitioner was that the suit plot belonged to Nalini Ranjan De. Nalini Ranjan De was a doctor by profession. During the lifetime of Nalini Ranjan De, Deba Prasad De started his medical practice from a room in the premises. Nalini Ranjan De was in occupation of the rooms in the northern side which were used as a godown for his grocery business. Apart from the rooms in the northern side, Nalini Ranjan De was in occupation of a verandah in the east. Radhika Ranjan De used to use the verandah to keep his grocery items. Radhika Ranjan De had a grocery shop adjoining the road of the P.W.D. Deba Prasad De, that is the predecessor of the plaintiffs tried to evict Radhika Ranjan De from the northern rooms and the eastern verandah claiming title on the basis of a Nirupan Patra. Deba Prasad De managed to include the property in his share by depriving Radhika Ranjan De. Deba Prasad had put a padlock on the outer door of the northern room and on a gate leading to the verandah in the east. There was a amicable settlement (Salish). Again Deba Prasad De tried to evict Radhika with the interference of the local political persons. It was settled that Deba Prasad would sell a portion to Radhika at a consideration of Rs.55,000/-. Radhika continued in possession to the knowledge of all, openly and continuously. After the death of Radhika, his elder son Prithwis, the defendant/petitioner and their sister inherited the property from Radhika. Thus, the defendant as an heir of Radhika was possessing the property by way of adverse possession.

The amendment application was filed by the plaintiff to include subsequent events of alleged construction and forceful occupation of other rooms in the premises in question, which was delineated as schedule 'B' in the application for amendment. Certain prayers were also sought to be inserted in support of the contention of the plaintiffs that during the pendency of the suit, the defendant had already tried to raise construction by taking forceful possession of other rooms within the suit property.

It appears from the order dated March 8, 2022 that opportunity was given to the defendant to file a written objection. Accordingly, written objection was filed. It also appears that the defendant had been given ample opportunity to contest the hearing of the amendment application. Although, on the date of the order, the defendant filed hazira, none appeared to contest the proceeding. Thus, taking note of the reluctant attitude of the defendant and to avoid further delay, the amendment was allowed.

Such ex parte order was sought to be recalled by the defendant/petitioner. The order was not recalled by the learned court below as the court recorded that the amendment petition was filed on February 1, 2021. On March 8, 2022 the defendant filed the written objection. The learned advocate for the defendant did not bother to move the objection although filed hazira.

The issue is whether the order impugned should be set aside on the ground that the defendant was not there to

contest the proceeding by advancing arguments although written objection had been filed.

In my opinion, no further opportunity is required to be given to the defendant in view of the fact that the same would become a futile exercise. The order passed is a foregone conclusion, even if the amendment application is heard again.

The plaintiffs wanted to incorporate certain subsequent facts with regard to the alleged forceful occupation of some portions of the premises in question, beyond what was within the possession of the defendant. The amendment was allowed at the pre-trial stage.

Secondly, the correctness of the allegations made in the amendment application which was sought to be incorporated in the plaint, were not to be looked into at the stage of allowing such amendment. The merits of the contentions of the plaintiffs, especially the averments which were sought to be incorporated by way of the amendment, will be decided in the trial. The defence case that the defendant was in occupation of the entire area, adversely and open to all, as also to the knowledge of all, by claiming inheritance through Radhika, will also be decided at the trial. Before that, the onus would lie on the plaintiffs to prove that they were the exclusive owners by inheritance from Deba Prasad De and they had a better title in respect of the suit property than the defendant who was allegedly allowed to reside in the property with permission and the permission was subsequently revoked.

These aspects will be decided only in the trial. The incorporation of alleged subsequent events of forceful dispossession are elaboration of the facts which occurred subsequently.

Under such circumstances, this Court does not find any reason to interfere with the order impugned. The petitioner is at liberty to file the additional written statement within two weeks after reopening of the court after the Puja vacation.

Accordingly, the revisional application is disposed of.

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

(Shampa Sarkar, J.)