

08.12.2023
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Ct. no. 652
sb

CO 1129 of 2019

**Golo Ray & Ors.
Vs.
Rupa Ray**

Ms. Susmita Saha Dutta
Mr. Niladri Saha
Ms. Madhurima Basu

...for the Petitioners

Mr. Debabrata Sen
Mr. Arun Kumar Das

...for the Opposite party

This is an application under Article 227 of the Constitution of India against the impugned order dated 14th December, 2018 passed by the learned District Judge, Uttar Dinajpur at Raiganj in connection with Civil revision no. 10 of 2017, arising out of order no. 34 dated 16.5.2017 passed by the learned Civil Judge, Junior Division, Raiganj, Uttar Dinajpur in connection with T.S. no. 806 of 2014.

The petitioner's case is that the petitioners as plaintiffs filed aforesaid suit against the defendant for declaration and permanent injunction. In the plaint, the plaintiff inter alia averred that the defendant used to get the signature of the plaintiffs on white paper upon providing monetary help to the plaintiffs. The defendant in the said suit entered appearance and filed written

statement contending that the suit property initially belonged to one Bishtu Charan Roy and the plaintiffs sold out the suit property to the defendant on a consideration of Rs. 16,000/- on 5.8.1999 and executed a declaration to that effect that they have sold out the suit property voluntarily and the plaintiffs have also executed their LTI in presence of the witnesses.

In pursuant to such written statement, the plaintiffs preferred an application under Order VI Rule 17 of the Code of Civil Procedure (CPC) seeking amendment of the plaint with a contention that the said declaration is forged and that the execution of such instrument never took place. The plaintiffs also wanted to incorporate in the plaint that the plaintiffs never put LTI on blank non-judicial stamp paper. The Trial Court, by the impugned order dated 16.5.2017 was pleased to allow the amendment application except the portion where the plaintiffs seeks to deny the execution of documents on non-judicial stamp paper.

Being aggrieved by the said order dated 16.5.2017, the plaintiffs preferred a revisional application under Section 115A of the Code before the court below and learned court below rejected the said application on jurisdictional point contending that after amendment of CPC, the civil revisional application is not maintainable from that order and he is lacking

jurisdiction to hear the said application under Section 115A of the Code.

Being aggrieved by that order, learned counsel for the petitioners submits that the court below erred in holding that he has got no jurisdiction to decide the present dispute. He ought to have considered that the present prayer for amendment is necessary for adjudication of the real controversy between the parties. The court below failed to consider that the petitioners do not try to incorporate any new fact into the plaint but only sought to challenge the documents relied by the defendant in their written statement.

Learned counsel for the petitioners, in this context relied upon judgments of ***Tapan Paul Vs. Anjali Paul*** reported in **(2016) 4 WBLR (Cal) 281** and ***Raj Kumar Bhatia vs. Subhash Chander Bhatia*** reported in **(2018) SCCR 138**. He also contended that the learned court of first instance erred in law in failing to accept that putting LTI on blank papers is not similar to putting LTI on non-judicial stamp paper and the plaintiffs cannot be said to have admitted in the plaint to put LTI on non-judicial stamp paper. Accordingly, he has prayed for setting aside the order impugned.

In this context, the petitioners in support of amendment also relied upon paragraph 70 of the judgment of ***Life Insurance Corporation of India vs.***

Sanjeev Builders Private Limited and another
reported in **(2022) SCC Online SC 1128**.

Learned counsel for the opposite party raised strong objection contending that the plaintiff in their plaint has admitted that they had put signature on the papers and thereby they have executed deed in favour of the defendants and by which the defendant acquired title in the suit property and now they are trying to withdraw their admission by seeking the proposed amendment and as such, the court at first instance rightly held that the denial regarding execution of documents on non-judicial stamp paper in the proposed amendment cannot be allowed and for which the order impugned does not call for any interference and accordingly, he has prayed for dismissal of the revisional application.

I have considered the submissions made by both the parties. On perusal of the order of the court below dated 14th December, 2018, it appears that the court below dismissed the revisional application basically with the observation that he has got no jurisdiction to exercise its revisional power under Section 115A of the CPC in respect of the impugned order under challenge after the amendment of Code of Civil Procedure and in this regard, he relied upon various judgments of this court and also the Supreme Court. After perusal of the order passed by court of first instance it appears that

the said court allowed the amendment application but what aggrieved the plaintiff is that he made a specific observation in the last portion of his order as follows:

“In passing this order, this court shall deny the plaintiff’s proposed amendment in so far as the fact of the denial of the non-judicial stamp paper is concerned. The rest of the amendment is accepted and the plaintiff’s contention in respect of each of the separate amendment is allowed”.

Accordingly, the court at first instance has allowed all other portion of amendment application save and except the portion where the petitioners/plaintiffs contended that the defendants in their written statement alleged that the plaintiffs by executing a document on non-judicial stamp paper of Rs. 10 had given permission to enter into the suit property and the plaintiffs by seeking amendment, wants to challenge the said document contending that it was forged and is not binding upon them as they had never put signature on the said document.

Now whether said document is a genuine or a forged one and whether it is a voluntary execution on the part of the plaintiff or not, shall be adjudicated by the Trial court i.e. the court of first instance after considering the oral and documentary evidence which will be adduced by the parties but for conclusive and effective adjudication of the present case, this part of the plaintiff’s contention is also material and relevant as this contention of the plaintiff is also a question which involves with the determination of real question in

controversy, specially in term of plaintiff's second prayer of plaint. If the question regarding adjudication about the genuineness of the said documents be kept open for final adjudication of the suit and defendant is given an opportunity to file additional written statement to confront the proposed amended portion of plaint the defendants will have no cause to prejudice, otherwise, it may create multiplicity of proceedings between the parties.

Moreover, the proposed amendment if allowed in it's entirety will not change the nature and character of the suit and there is nothing to show prima facie that the said prayer for amendment has been made with any mala fide intention or to cause delay. Furthermore, it appears that by way of proposed amendment, the plaintiffs only sought to elaborate a fact which he has already pleaded in the plaint regarding execution of documents. If the proposed amendment is allowed in it's entirety it will also not change the cause of action nor the relief sought for by the plaintiff could be materially affected. After all dominant purpose of Order VI Rule 17 is to minimize litigation. Though It is settled law that a categorical admission cannot be resiled from but clarification or explanation made by way of amendment, if needed, can always be allowed. Here plaintiff by way of amendment sought to clarify the distinction between putting signature on blank paper and that of on a

stamped paper, which is mere elaboration of existing pleading. While considering the application for amendment court is not supposed to go into the correctness or falsity of the subject matter of amendment, which can be kept open for final adjudication. Considering all these proposed amendment in it's entirety is required to be allowed.

In such view of the matter, C.O. 1129 of 2019 is allowed. Let the plaint be amended as per schedule of the petition filed by the plaintiff under Order VI rule 17 of the Code dated 1.9.2016. However the question about the genuineness and authenticity of the concerned document(s) allegedly executed by the plaintiffs shall be kept open before the court for final adjudication. The court at first instance shall give an opportunity to the defendant for filing additional written statement after serving upon him copy of amended plaint by the plaintiff. The Trial Court shall adjudicate all the issues without being influenced by any observation made herein.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)