

July 6, 2023
Sl. No.13
Court No.19
s.biswas

CO 1709 of 2023

Sailendra Nath Sarkar and others
vs.
sambhu Ghosh and others

Mr. Sudip Ghosh
Mr. Bidish Ghosh

... for the petitioners

Mr. Pinaki Ranjan Mitra
Mr. Sujata Mukhopadhyay

... for the opposite parties

The revisional application has been filed challenging an order dated April 18, 2023 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah in Title Suit No.283 of 2012. By the order impugned, learned court below rejected the application filed under Order 18 Rule 17 of the Code of Civil Procedure by the plaintiff for recalling PW1. Such application was filed to bring on record certain documents and certified copies of orders passed by the A.D.M.L.R., Howrah and the Land Reforms and Tenancy Tribunal. The learned court below upon considering that the documents were not relevant to the specific case of the plaintiff and were beyond the scope of pleadings, rejected the application.

No evidence, beyond pleadings can be allowed. The order is well reasoned. The learned court rightly refused to exercise discretion.

The plaint case is that the sale deed dated October 18, 1955 registered on October 19, 1955 and executed by Satya Charan Ghosh and Nirmal

Kumar Ghosh in favour of Sambhu Nath Dutta and another as also the subsequent registered sale deed dated August 21, 2000 executed by the Sambhu Nath Ghosh in favour of defendant no.1 were illegal, void and not binding upon the plaintiffs.

In the application under Order 18 Rule 17 of the Code, the petitioners stated that the fact that the defendant no.1 had applied for mutation before the Block Land and Land Reforms Officer, Domjur, Howrah and had also filed an application for conversion of land before the appropriate authority, were required to be brought in evidence.

As the matters were pending before the learned Additional District Magistrate (L.R.), Howrah, the District Land and Land Reforms Officer, Howrah vide Appeal Case No.4 of 2014 and the West Bengal Land Reforms and Tenancy Tribunal being Case No.2789 of 2021, the certified copies of these proceedings were sought to be tendered in evidence, by recalling witness of PW1.

It appears to this court that the issue before the learned court below in the suit was whether the sale deed dated October 18, 1955 which was registered on October 19, 1955 as also the deed dated August 21, 2000 were illegal, void and liable to be cancelled. The copies of the application for mutation and the application for conversion of land as also the orders

passed in the proceedings, are not relevant facts to be adjudicated. They do not find any mention even in the amended plaint. Such facts were not incorporated in the pleadings at all. The list of documents relied upon, do not mention these documents. Thus, the documents which are sought to be tendered by recalling the P.W.1 are not limited to the pleadings, but beyond the pleadings and cannot be introduced by adducing evidence at the stage of arguments. The order impugned does not call for any interference.

In the matter of ***Suresh Kumar v. Baldev Raj***, **1984** reported in ***SCC OnLine Del 129***, the Delhi High Court held as follows:-

“5. On a plain reading of this provision it is obvious that discretion vests in the Court to recall a witness who has been examined earlier at any stage of the suit which would evidently mean any stage before the judgment is pronounced. So, the discretion vesting in the Court under this Rule can be exercised even after evidence of the parties has concluded, of course, it must be exercised judicially and on well accepted judicial principles and not arbitrarily or capriciously...”

In the matter of ***M.M. Amonkar v. S.A. Johari***, reported in ***(1984) 2 SCC 354***, the Hon'ble Apex Court held as follows:-

“**10.** ... (c) that the Court's power to recall and examine any witness at any stage of the suit under Order 18 Rule 17 of CPC, on which strong reliance was placed by counsel for the respondent-plaintiff was to be exercised in

exceptional circumstances and no exceptional circumstance had been made out by the respondent-plaintiff inasmuch as these documents would have become available to him before he started the witness's cross-examination. May be in the exercise of its discretion another court might have taken a different view and allowed the application. But unless the reasons given by the learned trial Judge could be said to be moonshine, flimsy or irrational the rejection of the application cannot be dubbed as suggestive of non-judicial approach or bias or partiality on his part....”

The provision does not entitle any party to seek any permission to recall the witness and put any further questions.”

In the matter of ***Jatinder Singh Bhatia v. State***, reported in **2008 SCC OnLine Del 969**, the Hon’ble Delhi High Court held as follows:-

“**17.** The principle of finality attaches not only to final disposal of a lis but also to each segment of the proceedings. There is no reason not to apply the said principles for examination of witnesses also. Once a witness has been examined and discharged, he cannot be permitted to be recalled on the ground that the witness has changed his statement or has changed his mind or that he earlier did not tell the truth... In my view, we will be encouraging the trend of witnesses turning hostile if applications such as the present one are to be allowed.”

In such circumstances, the recalling of witness at the instance of the plaintiffs, that too, after completion of the evidence of the defendants and when the matter was listed for arguments, to fill-up a gap, is impermissible. The order under revision does not suffer from any irregularity.

The revisional application is disposed of without interference with the order impugned.

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

(Shampa Sarkar, J.)