

19.07.2023
Court No.19
Item no.19
CP

C.O. No. 1743 of 2023

Smt. Alpana Sinha

Vs.

Smt. Chitra Adhikari (Shroff) & anr.

Mr. Malay Singh
Ms. Nabanita Kapat
Mr. Shubham Gupta

...for the Petitioner.

Despite service, none appears on behalf of the opposite parties.

The petitioner is aggrieved by an order passed by the learned Civil Judge (Senior Division), 3rd Court at Alipore, South 24-Parganas, in Ejectment Suit No. 04 of 2015.

Mr. Singh, learned advocate for the landlord submits that the amendment was hit by the proviso to Order VI Rule 7 of the Code of Civil Procedure. The facts sought to be incorporated by way of an amendment at the stage of evidence of defendant was not unknown to the opposite party no. 1. The opposite party had failed to indicate in the application as to how, in spite of due diligence, she was not in a position to incorporate such facts prior to commencement of the trial.

By the order impugned, the learned court below came to the finding that as the opposite party no. 1 was only trying to assert her status as a

deserted wife of the original licensee, the amendment should be allowed for proper adjudication of the dispute in the suit.

The suit is one for recovery of possession upon evicting the opposite party no. 1 who allegedly became a trespasser after the original licensee had surrendered the leave and licence.

By way of amendment the plaintiff sought to incorporate the following facts:

- a) That the defendant no. 2 (her estranged husband) was not a habitual defaulter and he had not surrendered the leave and licence in respect of the flat in favour of the plaintiff.
- b) That the fact that the plaintiff required the flat urgently as her husband had been transferred from Puna to Kolkata, was not correct.
- c) That the ejectment notice was not duly served and there was no surrender of the premises.
- d) That the opposite party no.1 was continuing to occupy the premises.
- e) That the defendant no. 2 surreptitiously and in connivance with the landlord, surrendered the leave and licence. Such surrender was null and void.

- f) That the opposite party no. 1 was the legally married wife of the defendant no.2, who tried to avoid his responsibility towards the defendant no. 1 and tried to deprive her from her legitimate claim, in respect of the premises in question.

This court finds from the averments made in the written statement that all these facts sought to be incorporated by way of an amendment, have already been pleaded. By recasting the same pleadings, the amendment application has been filed, in order to give a picture that important facts were left out from the written statement due to bona fide mistake. Such amendment was brought at the time of evidence, after the cross-examination of the PW1 was over. Definitely, such amendment was hit by the proviso to Order VI Rule 7 of the Code. These facts were always within the knowledge of the defendant no.1.

Moreover, the opposite party no. 1, herself, filed a suit against the plaintiff and the defendant no. 2 for declaration and permanent injunction, being Title Suit No. 207 of 2014. The suit is pending before the learned Civil Judge (Junior Division) 1st Court at Aliopore. The factum of the title suit is mentioned in the written statement. She has relied on the same.

Thus, the facts sought to be incorporated are neither subsequent events nor are they relevant for the adjudication of the present suit, which is one for eviction and recovery of khas possession from a trespasser.

The statements that the opposite party No. 1 was the legally married wife of the defendant No. 2, who was left behind by her husband, have been pleaded in the written statement. A specific denial to the plaintiff's requirement of the flat after transfer of her husband from Puna to Kolkata, is available at paragraph 6 of the written statement. The assertion of her right to stay in the flat has been pleaded in paragraph 7 of the written statement. The opposite party No. 1 had categorically stated that she was not a trespasser and knowledge of the service of notice to quit has been denied.

In the written statement, the defence case is that the defendant no.1/opposite party No.1 started living in the suit premises as the wife of Goutam Shroff. That a leave and licence agreement was entered into between the plaintiff and Goutam Shroff. Goutam Shroff left the premises on February 24, 2014. Goutam Shroff filed a suit for divorce being MAT Suit No.24 of 2014. Goutam Shroff, in collusion with the plaintiff tried to take forceful possession of the property. Title Suit No.207 of 2014 was filed by

the opposite party no.1, before the Learned 1st Civil Judge Junior Division at Alipore. The learned court passed an interim order of injunction in Title Suit No.207 of 2014. That the opposite party no.1 was residing in the premises as the legally married wife of Goutam Shroff. That eviction of the defendant no.1 from the premises was a collusive effort between plaintiff and Goutam Shroff. That the surrender of the leave and licence did not have any legal value. That the notice was never served upon the opposite party no.1. She did not have any knowledge of the same.

The same facts were sought to brought in, by way of an amendment. All the above statements have been rephrased and put differently.

In the decision **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and anr.** decided in **Civil Appeal No.5909 of 2022**, the principles governing amendments have been laid down. It has been stated in paragraph 70(ii) that all amendments should be allowed which were necessary for determining the 'real question in controversy', provided it did not cause injustice or prejudice to the other side. The Hon'ble Apex in the matter of B.K. Narayana Pillai vs. Parameswaran Pillai & anr. reported in (2000) 1 SCC 712 as also in A.K. Gupta & Sons Ltd. vs. Damodar Valley

Corporation reported in AIR 1967 SC 96, held that amendments should be allowed if the same were required to pin pointedly decide the real controversy between the parties.

In the written statement, the opposite party admitted that that Goutam Shroff had taken the premises on leave and licence and she started living in the premises as the wife of the Goutam Shroff, after her marriage. In the amendment application, at one place, it has been mentioned that the property was leased, again at another place, it has been said to be a property taken on leave and licence. Thus, the admission made in the written statement that the premises taken by Goutam Shroff under a leave and licence agreement, was sought to be withdrawn.

At one place the opposite party no. 1 stated that Goutam Shroff did not surrender the leave and licence and in another place it has been stated that Goutam Shroff colluded with the plaintiff and surrendered the same. Thus contrary pleas were sought to be introduced.

The law is well settled. Contradictory pleas cannot be incorporated by way of an amendment.

In the decision of **Life Insurance Corporation (supra)** the Hon'ble Apex Court has pointed out certain instances when amendments should be allowed or should not be allowed.

The Hon'ble Apex Court laid down the principles of governing amendment in paragraph 70 of the decision. The relevant portion is quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed:-

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily

required to be liberal especially where the opposite party can be compensated by costs.”

The facts sought to be brought in have already been stated in the written statement. The amendment is not necessary for determination of the real controversy between the parties, as the suit is one for eviction of a trespasser. The amendment application has been filed only to drag the proceedings. The amendments are repetition of the same averments and pleadings made in the written statement, worded in a slightly different style, by importing different words and expressions. This is an abuse of process of court. The amendment is mala fide. It also seeks to withdraw a clear admission that the property was taken by Goutam Shroff under a leave and licence agreement. Specific denial of the plaint case has also been made. Hence, the amendment is not necessary at all. The learned court erred in allowing the amendment on the ground that the same was necessary for adjudication of the real controversy between the parties.

Thus, the order impugned is set aside.

The learned court below is directed to conclude the suit within a period of six months from the next date fixed, without looking into the amended written statement, if already filed.

The revisional application is accordingly allowed.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)