

17.10.2023
Court No. 19
Item no.18
CP

C.O. No. 2086 of 2023

Smt. Lilabati Devi
Vs.
Sri Om Prakash Das

Mr. Sukanto Chakrabarty
Mr. Zubair Ahmed

.....for the petitioner.

Mr. Ramkrishna Bhattacharyya
Mr. Kaushik Choudhury

.....for the opposite party.

The revisional application has been filed challenging an order dated March 27, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court, Serampore, Hooghly in Misc. Case No. 44 of 2020.

By the order impugned, the learned court below rejected an application for amendment of the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure, being Misc. Case No. 44 of 2020.

The suit was decreed ex parte. The petitioner prayed for setting aside of the ex parte decree passed in Title Suit No. 72861 of 2017.

The petitioner filed an application for amendment seeking to correct the cause title of the Misc. Case. The residential address of the petitioner was sought to be corrected as 126, Rishi Bankim

Sarani, P.O. & P.S. – Serampore, Dist – Hooghly, Pin – 712201.

The petitioner contended that inadvertently, and due to typographical error, an incorrect address, namely, Village – Joy Krishnapur, P.O. Begampur, P.S.- Chanditala, Dist.- Hooghly, Pin – 712306 was mentioned in the cause title of the misc. case. According to the petitioner, the correct address was already on record in the affidavit portion. Thus, the learned court was wrong in arriving at a finding that the amendment would change the nature and character of the suit and would allow the petitioner to withdraw an admission which was already on record, to the detriment of the plaintiff/opposite party.

Learned advocate for the plaintiff/opposite party submits that the suit is for eviction on certain grounds, including default and subletting. The plaint case is that the petitioner/tenant had sublet the Premises No. 126, Rishi Bankim Sarani to another person and he was residing elsewhere. In case, such amendment is allowed, the contentions of the plaintiff would be negated as the amendment would result in acceptance of the fact that the plaintiff was residing at 126, Rishi Bankim Sarani, and the property had not be sub-let.

In my view, amendment of the address of the tenant in the misc. case shall not result in denial of the plaint case. The tenant had mentioned 126, Rishi Bankim Sarani in the affidavit portion. Thus, this court is of the view that the incorporation of the said address should be allowed to correct an error and not for any other purpose. Merits of an amendment is not to be looked into while deciding whether to allow the amendment. The allegation of subletting will not be negated if such amendment is allowed.

However, only because the amendment is being allowed, it does not tantamount to a recognition of the fact that the defendant was residing at the concerned premises, when the suit was filed.

Moreover, in the plaint, the address of the defendant has been mentioned by the opposite party/landlord as follows:-

No. 6, Ram Sita Lane, Room No. 240, India Jute Mill Quarter, under Post Office and Police Station Serampore in the District of Hooghly, Pin-712201.

The defendant denies receipt of summons. This aspect is required to be proved in evidence in misc. case. The question is whether summons were received at all by the defendant. Such issue shall be decided by the learned trial court while deciding the misc. case, upon evidence. Incorporation of the

address would not mean that this court recognizes the fact that the summons were required to be served at the corrected address.

Under such circumstances, the amendment neither changes the nature and character of the suit nor does it give any additional advantage to the defendant in the misc. case. Moreover, the plaintiff will get adequate opportunity to file the additional objection to the said amendment.

The revisional application is disposed of. The order impugned is set aside.

The amended application be filed within two weeks after reopening of the court after the puja vacation.

The additional objection shall be filed within two weeks from receipt of the amended application.

This court has not gone into the merits of the claims and counter claims of the parties in the proceeding pending.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)