

Ct. 17.07
No. 2023
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akb

C.O. 2731 of 2019
Purna Chandra Garain
-Versus-
Somnath Dey & Ors.

Mr. Chittapriya Ghosh
Mr. Kuntal Roy **...For the Petitioner**

Mr. Pinaki Ranjan Mitra **...For the Opposite Parties**

An order being No. 129 dated 26th June, 2019 passed by the learned Civil Judge (Junior Division), Sadar Court at Suri, Birbhum in Title Suit No. 148 of 2008 has been assailed in the present application.

The predecessor in interest of the opposite parties herein namely late Subhra Dey, being plaintiff filed aforesaid suit for recovery of possession and mesne profit against the defendant / petitioner herein.

The defendant / petitioner entered appearance by filing written statement and also filed an application on 2nd January, 2009 under Section 7(1)(a) of the West Bengal Premises Tenancy Act, 1997 (Act of 1997).

During pendency of the suit the original plaintiff Subhra Dey died on 4th December, 2015 and the present plaintiffs / opposite parties were substituted in her place long back in 2016.

The petitioner states that after completion of evidence, the suit was subsequently fixed for argument on 7th March, 2019 when both the parties advanced their respective arguments and next date was fixed on 27th March, 2019 for further arguments, if any and for delivery of judgment.

On that date of argument learned Court below

asked the plaintiffs / petitioners to clarify their status in respect of the disputed premises and further pleased to fix next date on 9th April, 2019 and asked the substituted plaintiffs for taking proper steps, if any.

Subsequently, after completion of argument on behalf of the respective parties, the plaintiffs / opposite parties filed the impugned application under Order VI, Rule 17 of the Code of Civil Procedure for amendment of plaint thereby prayed for incorporation of certain facts in the plaint. The petitioner herein contested the said application and the Court below by the impugned order was pleased to allow the said prayer for amendment subject to payment of cost of Rs. 400/-.

Mr. Chittapriya Ghosh, learned Counsel appearing on behalf of the petitioner submits that the Court below acted illegally and with material irregularities in passing the impugned order and he has erred in holding that the amendment sought for by the plaintiffs / opposite parties are subsequent event. In fact the plaintiffs / opposite parties were substituted long back in the year 2016 and the substituted plaintiffs ought to have taken steps for amendment of plaint, if any, in support of their grounds for eviction but they have filed the same after completion of argument made by the respective parties, which is barred under the proviso to Order VI, Rule 17 of the Code of Civil Procedure.

In this context petitioner contended that the proviso to Order VI, Rule 17 of the Code of Civil Procedure provides that no application for amendment shall be allowed after the trial has commenced unless the Court comes to conclusion that in spite of due diligence, the opposite parties

/ plaintiff could not have raised the issue before the commencement of trial. The petitioners have filed the amendment application, after conclusion of trial only to cover up lacuna and in order to bring a new story of reasonable requirement on the verge of completion of trial, which is not permissible in law. Accordingly, the petitioner has prayed for setting aside the order impugned.

Mr. Pinaki Ranjan Mitra, learned Counsel appearing on behalf of the opposite parties submits that the plaintiff No. 2, Smt. Suchisimita Sadhu (Dey) after the death of original plaintiff has applied for license of M.R. Dealership, which is under process, which fact plaintiffs want to incorporate in the plaint by way of amendment to justify their future requirement and as such the Court below was justified in passing the order impugned and such order does not call for any interference.

On perusal of the plaint it appears that the original plaintiff namely Smt. Subhra Dey, since deceased, filed the aforesaid suit on the ground of reasonable requirement for her own use and occupation stating that she is running a business under the Public Distribution System obtaining license from Government of West Bengal, at her residential house and for keeping inflammable substance separately to avoid danger, she requires the suit premises. However, during pendency of the suit she died and accordingly her license for the said business under the Public Distribution System has been terminated.

It is needless to mention that the present plaintiffs / opposite parties were substituted in place of said deceased, Subhra Dey in the year 2016. Now by way of amendment the opposite parties herein wants to incorporate that after the

death of original plaintiff, her sister Suchismita, who is substituted plaintiff No. 2, filed application for obtaining M.R. Dealer licence which is still pending and as such said plaintiff No. 2 seeks eviction of the present defendant anticipating her need in foreseeable future, for the same reason as it was put forward by the original plaintiff.

I have heard learned Advocate for both the parties.

Aforesaid contention sought to be incorporated in the plaint to establish case of reasonable requirement is speculative. There is no amount of certainty that plaintiff No. 2 will be awarded said licence by the competent authority in future. There is also nothing to show that she has at all been assured to grant such licence, so that one can anticipate her need in foreseeable future in terms of future requirement as put forward by the original plaintiff. The expression used in Section 6 of the Act of 1997 is not “desire” but “requires”, which involves something more than a wish. Original plaintiff died in 2015 and till date petitioner could not show that their anticipation has got any basis. Bonafide need or requirement cannot be artificially extended.

Accordingly, such amendment is not at all required for the purpose of adjudication for the real controversy between the parties.

The other aspect of the matter is original plaintiff died in 2015 and present plaintiffs were substituted in 2016, and as such plaintiffs who are seeking amendment is to explain why they could not have raised their point before the trial commenced despite exercising due diligence. No such explanation offered in prayer for amendment. Without there

being any finding as to due diligence as contemplated in proviso to Order VI, Rule 17, the Court below ought not to have allowed amendment, specially when, it is plaintiffs own case that after the death of original plaintiff in 2015, plaintiff no. 2 applied for license.

Proviso appended to Order VI, Rule 17 of the Code puts an embargo on exercise of Courts jurisdiction unless the case of “due diligence” raised and established. The Court’s jurisdiction is limited in a case of this nature to allow the prayer for amendment, where amendment sought for long after commencement of trial, more specifically at the verge of completion of trial. Accordingly in the absence of case of due diligence, Court has no jurisdiction at all to allow the prayer for amendment of the pleading, and I find it is a fit case to interfere the order impugned invoking power under Article 227 of the Constitution of India, on the ground of exceeding jurisdiction by the Court below.

In such view of the matter the order passed by the Court below is perverse and liable to be set aside.

The revisional application, being C.O. 2731 of 2019 is accordingly allowed.

The order impugned No. 129 dated 26th June, 2019 is hereby set aside. However, this order will not preclude the plaintiffs / opposite parties to file fresh amendment application, if any, before the Court below seeking eviction on any lawful ground, subject to the proviso laid down under Order VI, Rule 17 of the Code of Civil Procedure and in the event of filing such application by the opposite parties, the Court below will adjudicate the same in accordance with law after giving opportunity to the defendant to contest the same,

without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)