

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 2080 of 2021

Sri Sukumar Kanp & Ors.

Vs.

**Khudiram Patra, since deceased, represented by Sri Narayan Patra &
Ors.**

For the Petitioners : Mr. Suprabhat Bhattacharya

For the Opposite parties : Mr. Asish Chandra Bagchi
Ms. Malyasree Maity

Heard on : 06.02.2023

Judgment on : 15.02.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order no. 126 dated 28.09.2021 passed by the learned Civil Judge (Junior Division), 3rd Court, Tamruk, Purba Medinipur in Title Suit No. 117 of 2010 present application under Article 227 of the Constitution of India has been preferred. By the impugned order learned Court below has been pleased to reject plaintiff's prayer for amendment of plaint.

2. Petitioner contended that the aforesaid Title Suit against opposite parties was filed with prayer for declaration of title in the (ka) schedule property and also for a declaration that the plaintiffs have inherited the said property and the opposite parties have no right title or interest in the said property under any capacity and also for permanent injunction. Petitioner states that the Schedule property originally belonged to one Amiya Ranjan Maity son of Sashibhusan Maity and Amiya Ranjan Maity was in khas possession in the said land by making cultivation and his name was duly recorded in the record of rights. Subsequently said schedule property was sold to the predecessor of the plaintiffs, Madhusudan Kanp by a deed of sale dated 01.08.1956. Madhusudan after purchase digged a pond on a portion of the said Schedule land and some portion converted into Bastu where he had built a house and was in possession. The plaintiffs in their turn were resided in the said house to look after the said property. The name of Madhusudan kanp was recorded in the L.R. Record of Rights but due to mistake the area of land has not been shown correctly. Madusudan Kanp sold 78 decimal of land from “Kha” schedule and rest 2.42 decimal of land was in his possession. Plaintiff’s further case is Madhusudan Kanp died sometime in the year 2000 and as such the plaintiffs inherited the said property as his legal heirs and representative. Petitioner further submits that the opposite parties No.1(ka) to 1 (cha) are claiming themselves as Bargadar in respect of a portion of “Ka” schedule suit property but the plaintiff are not served with any notice in respect of recording

of their names as Bargadar and further contended that recording their names as “Bargadar” is erroneous and baseless.

3. The evidence of both the parties have concluded and after closing of evidence the petitioners filed aforesaid application for amendment of plaint on 24.07.2019. By the said application for amendment the plaintiffs want to incorporate as to how and in what manner their vendor Amiya Maity got the suit property and if the said facts be not incorporated in the plaint that will cause serious prejudice to the plaintiff. In support of their delayed filing of application for amendment, plaintiffs contended that at later stage they came to know about the fact relating to way of acquisition of title by Amiya Maity in connection with the suit property, from whom plaintiffs father purchased the suit property.

4. Learned counsel appearing on behalf of the petitioner further submits, if the proposed amendment is allowed it will not change nature or character of the suit nor it will create any new or inconsistent pleading. But the trial court rejected the said application on the ground that it has been filed at a belated stage. According to the petitioner the court below was wrong in not considering the facts for determination in the suit and that documents relating to proposed amendment are very old which is dated 02.09.1930. In spite of due diligence plaintiff/petitioner could not have raised the matter before the commencement of trial. He further submits that proposed amendment is very much necessary in order to determine the real question in controversy between the parties.

5. Learned Counsel appearing on behalf of the opposite party raised objection and referred proviso to order VI rule 17 of the Civil Procedure code and contended that the evidence of both the parties have already been closed and as such the trial court was justified in rejecting the prayer for amendment as plaintiff miserably failed to make out any case of due diligence and as such the order impugned does not call for any interference by this court.

6. On perusal of plaint it appears that the plaintiff has filed said suit for declaration of their right title interest in the “Ka” schedule suit property and also for injunction restraining defendants from disturbing plaintiffs’ possession in the ‘ka’ schedule suit property along with other reliefs. The ‘ka’ Schedule property in the plant has been described as property measuring 2.42 decimal (according to record 2.31 decimal) in plot no. 5992 at Mouza Seorabera and ‘Kha’ schedule has been described as LR Plot No. 5992 measuring 3.24 decimal (as per recording 3.10 decimal) out of total land of 4.54 decimal.

7. On perusal of both side contentions, it is clear that real dispute lies between the parties is whether plaintiffs have acquired any right title interest in the schedule mentioned suit property or not and whether the defendants have Bargadarship right in connection with schedule property or not. This is because in the evidence of DW-1, Narayan Chandra Patra has clearly stated that in the LR record of rights though the father’s name of DW-1 has been correctly recorded as Bargadar but the rayet’s name has been wrongly written as Madhusudan Kanp, which should have been recorded in the name of Chittranjan Maity or his successor and said DW-1 flatly denied that 3.24

decimal land in plot no. 7633 was ever owned by Amiya Ranjan Maity and said DW-1 specifically stated in his evidence that the defendants are in possession of the suit land measuring 2.31 decimal as Bargadar. Plaintiff in their plaint denied defendant's bargadarship right and averred that they are in exclusive possession of said property. In view of above what the court below is required to ascertain in the suit is whether defendant has any right to possess the Schedule suit property measuring 2.31 decimal as alleged, as of right claiming themselves as Bargadar.

8. In view of section 21 (3) of the West Bengal Land Reforms Act 1955, if any question arises as to whether a person is a Bargadar or not in respect of the suit property that question must be referred to the prescribed authority appointed under section 18 (1) of the Act for decision and such court is to dispose of the suit in accordance with the decision communicated to it by the said officer or authority, to whom the question was referred. Since in the present suit plaintiffs have denied defendants Bargadarship right to possess the land and since plaintiffs have prayed for permanent injunction against defendants restraining their possession, such issue should have been referred to said authority for decision, for effective adjudication of issue pertaining to injunction.

9. Similarly when the plaintiff has claimed that their father Madhusudan Kanp got the suit property by way of deed of purchase from Amiya Ranjan Maity and when such facts have been denied and disputed by the defendants stating that it was originally belonged to one Chittranjan Maity and it was

never a property of Amiya Ranjan Maity and Amiya Ranjan Maity did not have right to execute deed in favour of plaintiff's predecessor, such denial of title casts cloud in plaintiff's title in the suit properties and gives rise to cause of action to file the said suit for declaration claiming their right title interest in the suit property. Here comes the relevance of proposed amendment, and learned court below should have adjudicated the amendment application keeping it in mind whether amendment is necessary to decide real question in controversy and also whether proposed amendment if allowed, will cause any prejudice or injustice to other party, which cannot be compensated adequately in terms of money.

10. It appears that from order impugned that learned court below rejected the plaintiffs prayer for amendment only on the ground that the suit has already attained at its maturity stage, where evidence on the part of both the parties have concluded and argument also been heard in part. So the court below declined to allow the said prayer for amendment on the ground that the plaintiff by way of amendment wants to cover up the lacuna. Learned court below has not explained what lacuna plaintiff is trying to cover up by the proposed amendment.

11. In view of ***Revajetu Builders and developers Vs. Narayanaswamy and sons and others*** reported in **(2009) 10 SCC 84** the Apex Court in paragraph 63 has laid down the factors to be taken into consideration while dealing with the applications for amendments which are as follows:-

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is *bona fide* or *mala fide*;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

12. Accordingly the power to grant amendment to pleadings is intended to serve needs of justice and is not governed by any narrow or technical limitation as Rules of procedure are intended to be handmaids of administration of justice. It is also well settled that the dominant purpose behind consideration of an amendment application is to minimize the litigation.

13. The golden rule which emerges from the judicial pronouncements is in order to consider an application for amendment, the court is to look into whether such application for amendment is *malafide* worthless dishonest and design to delay legal proceeding then it should be discouraged but on the contrary if the amendments sought is *bonafide*, legitimate, honest and necessary the court is required to decide the same accordingly.

14. Keeping in view the parameters as laid down in ***Revajeetu Builders and Developers Case (Supra)*** if the fact of the present case as narrated above is examined, it clearly established that the court below is required to adjudicate as to whether plaintiffs have right title interest in the schedule mentioned suit property or not and whether defendant has right to possess any portion of the

suit property or not and whether plaintiff is entitled to get any order of injunction against the defendants or not. If these are the subject matter of dispute then for adjudication of the said dispute the court below should have considered as to whether proposed amendment is required to adjudicate above mentioned disputes between the parties or not and for that, belated filing of application whether can stand in the way or not, and for that purpose whether without the proposed amendment the real controversy between the parties as stated above can be adjudicated or not.

15. In view of above the case is remanded before the court below to adjudicate the impugned amendment application afresh taking into consideration whether proposed amendment of the plaint is at all required to adjudicate the real controversy raised by the parties, or not.

16. Accordingly the order impugned dated 28.09.2021 passed by the learned Civil Judge (Junior Division), 3rd Court, Tamluk, Purba Medinipur in Title Suit no. 117 of 2010 is hereby set aside. Learned Court below is directed to hear and dispose of aforesaid application afresh in the light of the above observations within a period of three months from the date of communication of the order.

17. C.O. 2080 of 2021 is accordingly disposed of.

There will be no order as to costs.

18. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)