

12.12.2023
Court No. 19
Item no.35
CP/GB

C.O. No. 2831 of 2023

The Kolkata Municipal Corporation
Vs.
Sri Arup Bakshi & Ors.

Mr. Alak Kumar Ghosh
Mr. Nilanjan Chatterjee

.....for the petitioner.

The revisional application has been filed challenging an order dated June 8, 2023, passed by the learned Civil Judge (Senior Division), Serampore in Title Suit No. 144 of 2015.

By the order impugned, the learned court allowed an application for amendment of the plaint. It was held that the proposed amendment was filed to incorporate subsequent facts and for elaboration of the already existing facts. Facts were to be proved at the time of trial, by leading cogent evidence. Thus, there was no reason why the amendment should not be allowed.

It was further recorded that the trial had not commenced and the amendment was formal in nature. The same did not change the nature and character of the suit. That the amendment was necessary to avoid multiplicity of proceedings.

Mr. Ghosh, learned advocate appearing for the petitioner, submits that the amendment would change the nature and character of the suit. The plea

of the plaintiffs in the schedule of amendment was contrary to what they had pleaded in their plaint. The plaintiff no. 1, claimed to be a non-agricultural tenant. The said plaintiff could not further claim that there was an irrevocable right to stay on the property.

Mr. Ghosh further submits that the plaintiffs did not have any right, title and interest over the property in question and by introducing a new allegation of construction on the property, the plaintiffs were trying to establish their right of possession.

The plaintiffs' case is that the Kolkata Municipal Corporation executed a deed of lease in respect of the said land in favour of Janab Badiruddin Hossain Mallick. Thereafter, Badiruddin accepted the plaintiff no. 1 as a partner in the business. The plaintiff no. 1 started to manufacture bricks in the name and style of M/s. Arup Bakshi and was paying rent to the defendant no. 1. Municipal tax was also paid. The plaintiff no. 1 and Janab Badiruddin Hossain Mallick were non-agricultural tenants in respect of the land in question. That the defendant no.1 did not have any right to eject the plaintiffs, who were non-agricultural tenants and had acquired a non-ejectable right over the property.

The corporation held a meeting and indicated to the plaintiffs that they would require the said land for construction of a film city. Apprehending that the plaintiffs would be ejected forcibly and illegally by the corporation, a suit was filed. The prayers are for a decree of declaration that the plaintiffs had acquired a non-ejectable right and interest over the suit property and for permanent injunction.

In the application for amendment, the plaintiffs wanted to add a schedule with further averments, most of which, in my opinion, relate to subsequent developments/events.

In paragraph 'a' of the schedule of amendment, the plaintiffs have stated that the men and agents of the defendants openly declared that instead of a film city, a pumping station would be constructed in the suit property as also in the adjacent area. On January 17, 2019, the men of the defendant no.1 went to the property and started to cover the suit property with tin sheet and bamboo pillars.

In paragraph 'b' the plaintiffs averred that the defendant no.1 had admitted possession of the plaintiffs and the plaintiffs started construction of a pucca brick kiln, staff quarters, etc., claiming an irrevocable right over the property.

This Court has analysed the averments in the plaint and the contents of schedule of amendment.

Subsequent events and the factum of possession were sought to be brought on record. Such amendment does not change the nature and character of the suit. The plaintiffs have already stated that Janab Badiruddin Hossain Mallick and the plaintiff no.1 were non-agricultural tenants in the said plot and that the Kolkata Municipal Corporation also executed a deed of lease in respect of the schedule property, in favour of Janab Badiruddin Hossain Mallick.

Thus, the learned court did not err in allowing the amendment. It is well-settled that the amendments should be allowed liberally. The amendment sought for is neither time barred nor does it amount to withdrawal of any admission. Reference is made to the decision of the Hon'ble Apex Court in the matter of ***Revajeetu Builders and Developers vs. Narayanaswamy and sons and others*** reported in ***(2009) 10 SCC 84***. The amendment will not cause any prejudice to the petitioner. The relevant paragraph is quoted below:-

“Factors to be taken into consideration while dealing with applications for amendments

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.”

The revisional application fails.

The contention of Mr. Ghosh, about the belated amendment is not accepted. The delay is not fatal, as the trial had not commenced. Further, it is well-settled that the merits of the amendments shall be decided at the trial, on proof, through evidence. At the stage of allowing an amendment application, the correctness of such statements are not to be looked into. The order impugned is not interfered with. The petitioner will file the additional written statement to the amended plaint within the time limit to be fixed by the learned court below.

As the suit is of 2007, this Court directs the learned court below to dispose of the suit within a year.

Accordingly, the revisional application is disposed of.

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

(Shampa Sarkar, J.)