

31.3.2023
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Ct. no. 652
sb

C.O. 3515 of 2019

**Sk. Md. Ashraf & Ors.
Vs.
Raja Tarafdar & Ors.**

Mr. M. Rahman
Mr. Sankar Paul
Ms. Tapati Sarkar ...for the Petitioners

Mr. Aniruddha Chatterjee
Mr. Abir Lal Chakraborty
Mr. Rishab A. Khan ...for the Opposite parties

Affidavit of service filed by the petitioners is taken on record.

Challenging the order no. 29 dated 28.8.2019 passed by learned Judge, 6th Bench, City Civil Court at Calcutta in Title Suit no. 883 of 2016, the present application under Article 227 of the Constitution of India has been preferred.

By the impugned order, the learned court below was pleased to allow the plaintiff's application for amendment under Order VI Rule 17 of the Code of Civil Procedure.

The plaintiff/opposite party herein filed aforesaid suit against the defendant/petitioner herein seeking a decree for declaration as to their right title and interest and ownership in respect of A schedule property which includes B schedule

property and also for decree for permanent injunction restraining the defendants/petitioners and their men and agents from creating disturbance, obstruction hindrance and annoyance to the opposite party no. 1 and 2 towards the enjoyment of "A" schedule property.

The defendants/petitioners appeared in the said suit and filed written statement and defendants/petitioner's specific case is that their predecessor-in-interest namely, Md. Ibrahim, since deceased was recorded tenant in respect of the two tenancies namely one room in the ground floor of the said property and other one being a room situated in the first floor thereof and the erstwhile landlords used to grant/issue separate rent receipts in respect of aforesaid two tenancies. The defendants/petitioners are carrying laundry business in the aforesaid two tenancies till 29.9.2009 when the said Md. Ibrahim died leaving behind defendants / petitioners as his legal heirs and successors. It is also the case of the defendant that neither the erstwhile landlord of the said recorded tenant nor the vendor of the plaintiff/opposite party no. 1 had ever been in the possession of the A schedule property.

Now during pendency of the aforesaid suit, the plaintiff has come out with the aforesaid application

for amendment vide order VI rule 17 to incorporate and introduce the new fact that with the death of Md. Ibrahim, the heirs and successors of the deceased tenant have no locus standi to occupy the suit property after the expiry of five years and in view thereof, they also sought to introduce an additional prayer for a decree for recovery of possession of the B schedule property by way of carrying out the amendment of plaint.

Learned counsel for the petitioner submits that at the time of presentation of the suit it was a suit for declaration and now they want to incorporate the prayer for recovery of possession, if such prayer for amendment is allowed, it will completely change the nature and character of the suit and that the prayer for amendment has been made with a mala fide intention to oust defendant/petitioners without taking due course of law. Moreover certain facts sought to be incorporated in the application, are already on record and there is no need to incorporate such facts by way of amendment. In this context, he relied upon a judgment reported in (2022) 4 ICC 341 (Cal).

Learned counsel for the opposite parties submits that the proposed amendment is formal in nature in view of amended definition of tenant under the Act of 1997 and if allowed, it will not change the

nature and character of the suit. Moreover, the order impugned speaks that the trial has not yet commenced and as such plaint can be amended and the defendants will have no cause to prejudice if the opportunity to file additional written statement be given to them. There is no mala fide on the part of the plaintiff/opposite party in preferring the said application for amendment as they are entitled to enforce their right, which they have derived under the law.

Learned court below after hearing both the parties, was pleased to allow the plaintiff's application under Order VI Rule 17 imposing cost of Rs. 2000/- and in this context he relied upon the celebrated judgment of the Apex court reported in (2009) 10 SCC 84 which laid down some basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment. Accordingly the court below came to the conclusion that the proposed amendment if allowed, it will not change the nature and character of the suit nor it will cause such amount of irreparable loss or injury which could not be compensated by money nor it will take away any valuable right accrued by the defendant.

I have considered the submissions made by both the parties and perused the schedule of

amendment. On the perusal of schedule of amendment, it appears that the bone of contention of the proposed amendment is that the original tenant, Md. Ibrahim died and his wife has predeceased him and presently there is none to claim tenancy right under the plaintiffs in respect of suit property after expiry of five years of death of original tenant and as such in view of the West Bengal Premises Tenancy Act, 1997, the status of the defendant nos. 1 to 7 in respect of B schedule property is no better than that of a trespasser and as such they have sought for the proposed amendment along with others. The proposed amendment as made out in the schedule of amendment according to this court, if allowed, will neither change the nature and character of the suit nor it will take away any valuable right accrued by the defendants as the claim of plaintiff / opposite party is based on statute. On the contrary, it appears that for effective and conclusive adjudication of the suit, the proposed amendment is required to minimize litigation between the parties in respect of suit property. Furthermore, the defendant/opposite party will have no cause to prejudice if the opportunity of filing additional written statement be given to them and issue be also framed for adjudication to that extent, as the trial has not yet been commenced.

Considering the same, I find nothing to interfere with the order impugned nor there is anything to say that the order impugned is perverse or the court below has acted illegally or exceeded its jurisdiction.

Accordingly, C.O. 3515 of 2019 is dismissed.

However, this order will not preclude the defendants/petitioners to file additional written statement if any, before the court below. Since the suit is pending from the year 2017, the court below is requested to make every endeavour for expeditious disposal of the suit and to conclude the entire proceeding preferably within a period of one year from the date of communication of this order.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)