

26.09.2023
Sl. No.21(DL)
srm

C.O. No. 3109 of 2023
Sri Banibrata Dutta & Anr.
Versus
Sri Utsav Dey & Anr.

Mr. Anshunath Chakraborty,
Mr. Gourab Mukhopadhyay

...for the Petitioners.

This revisional application arises out of an order dated August 10, 2023 passed by the learned Judge, 2nd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No.303 of 2019.

By the order impugned, the learned court below allowed some amendments, which were essentially corrections in the plaint and schedule of the plaint. The court found that the errors were bona fide mistakes.

Learned Advocate for the petitioner submits that in the schedule of the plaint, the suit property (tenanted portion) was depicted as one room on the ground floor at Premises No.7/1B, Gopal Chandra Lane, Kolkata-700073, Police Station-Bowbazar. Allowing the amendment at the stage of argument, would change the plaint case. Such amendment was barred

under the proviso to Order VI Rule 17 of the Code of Civil Procedure.

From the plaint, it appears that the suit was filed for recovery of khas possession from the entire ground floor along with privy and courtyard, lying and situated at Premises No.7/1D, Gopal Chandra Lane, Kolkata-700073. Page 18 of the revisional application is the plaint. The caption as stated therein indicates the entire ground floor, privy and courtyard. In paragraph 2 of the plaint, it has been stated that the petitioner was inducted as a monthly tenant in respect of the entire ground floor with privy and courtyard, lying and situated on the ground floor of the Premises No.7/1D, Gopal Chandra Lane, Kolkata-700073.

The schedule of the amendment is quoted below:

“THE SCHEDULE OF AMENDMENT

- i. Paragraph no. 12 of the plaint, in the address portion, 7/1B, Gopal Chandra Lane should be changed as 7/1D, Gopal Chandra Lane.
- ii. In the schedule of the plaint, the wrong typed portion is “one room on the ground floor at premises No. 7/1B, Gopal Chandra Lane, Kolkata-700073, Police Station-Bowbazar” which is required to be amended as **“entire ground floor with privy and court yard lying and situated on the ground floor of the Premises No. 7/1D, Gopal Chandra Lane, Kolkata-700073, Police Station-Bowbazar”**.

The first amendment was with regard to a correction in the address "1B" as "1D". The second one was in the schedule, for insertion of entire ground floor with privy and courtyard lying, situated in the ground floor of the Premises No. 7/1D, Gopal Chandra Lane, Kolkata-700073, Police Station-Bowbazar.

In my view, the order impugned does not suffer from any illegality.

The decision of the Hon'ble Apex Court in *Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.* decided in *Civil Appeal No. 5909 of 2022* and subsequent decision in *Ganesh Prasad vs. Rajeshwar Prasad and ors.* reported in *2023 SCC OnLine SC 256* it has been held that amendment should be allowed liberally. In this case, it is found that the caption in the plaint and the pleadings all relate to recovery of khas possession from the entire ground with privy and courtyard from the Premises No.7/1D, Gopal Chandra Lane, Kolkata-700073. There is no change in the nature and character of the suit. Neither any admission has been withdrawn. Contrary pleas have also not been set up. Only, the schedule and the mistake in the address were sought to be corrected. The plaint deals with the entire portion, but the schedule suffered from an error.

The decision cited by Mr. Chakraborty in the matter of Vigyan Shastri vs. M/s. Rusoma Laboratories & Ors. (In Re: Misc. Petition No.1679 of 2022) passed by the Madhya Pradesh High Court, does not help the petitioner. In the said decision, a new survey number of the suit plot was sought to be introduced. In this case, the identification of the suit property is evident from the body of the plaint. Only the schedule was sought to be corrected. Such correction was allowed as it was detected that it was a *bona fide* typographical error.

The decision of Vidyabai & Ors. vs. Padmalatha & Anr. reported in (2009) 2 SCC 409, also does not help Mr. Chakraborty as the delay in correcting the schedule has not caused any injustice. It is the admitted case of both the parties that the defendants were tenants in respect of the entire ground floor with privy and courtyard.

Under such circumstances, the revisional application is dismissed.

In any event, an opportunity has been given to the petitioners to file their additional written statement to the amended plaint. All their objections as raised herein, can always be stated in the additional written statement, on the correctness of the facts.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)