

September 22, 2023
Sl. No.5
Court No.19
s.biswas

CO 3131 of 2022

Nirmal Mondal
vs.
Malina Bala Sardar

Mr. Jaharlal Ray
Ms. Kavita Rani

... for the petitioner/plaintiff

Mr. Amal Krishna Saha
Mr. Kartik Kumar Ray

... for the opposite party/defendant no.1

The revisional application has been filed challenging the order dated April 19, 2022 passed by the learned Civil Judge (Junior Division), 3rd Court at Baruipur, South 24 Parganas, in Title Suit No.48 of 2016.

By the order impugned, the learned court below rejected the application for amendment of the plaint on the ground that proposed amendment was barred by limitation. A deed was sought to be challenged, beyond three years from date of knowledge of the alleged deed. The learned court below held that the amendment could not be allowed as the same was filed beyond the period of limitation. Article 56 of the Indian Limitation Act was discussed.

Mr. Ray, learned advocate appearing for the petitioner/plaintiff submits that the application for amendment was filed within a year from the receipt of the copy of the alleged deed of sale dated April 13, 1988. The defendant no.1/opposite party claimed to have acquired right, title and interest in respect of

the suit property from one Nirmal Kumar Mondal by virtue of a transfer, on the basis of the said deed. According to Mr. Ray, unless particulars of deed were available, a challenge to the same could not have been thrown.

Mr. Saha, learned advocate appearing on behalf of the opposite party/defendant no.1, submits that the pleadings in the application under Order 6 Rule 17 of the Code of Civil Procedure would indicate that the date of knowledge, admittedly, was the day on which the written statement was served upon the plaintiff, i.e., August 2/3, 2016. The application for amendment was filed on December 4, 2019. Under such circumstances, the learned court below did not err in rejecting the application for amendment.

Mr. Saha further submits that it was within the discretion of the court not to allow the amendment. This Court in exercise of power under Article 227 of the Constitution of India, should not interfere with the order as the order does not suffer from any perversity.

Heard the learned advocates for the respective parties. The Title Suit No.48 of 2016 was filed for declaration and permanent injunction. The plaint case was that one Nirmal Kumar Mondal had conveyed the suit property in favour of the plaintiff by a registered deed of conveyance dated June 1,

1977 and since purchase, the plaintiff was enjoying the property and using the same for agricultural purpose. On June 23, 2015 and November 18, 2015, the defendant no.1/opposite party forcefully entered into the suit property and threatened to dispossess the plaintiff. On such ground and finding no other alternative, the suit for declaration and injunction was filed. The defendant no.1, the only contesting defendant, filed the written statement. In paragraph 6a of the written statement, the defendant no.1 categorically stated that 66 decimals of the suit plot had been transferred by Nirmal Kumar Mondal to the defendant by a registered deed of sale dated April 13, 1988. Thus, the defendant claimed to be a co-sharer in respect of the suit plot.

It was further stated that the schedule of the plaint was vague and ambiguous. The predecessor in interest of the plaintiffs did not have any right, title and interest in respect of the suit plot.

The application for amendment was filed in December 2019, admittedly, beyond three years from the date of knowledge of the alleged deed dated April 13, 1988.

The date of knowledge was the date on which the written statement was served upon the plaintiff. The contention of Mr. Ray that the deed could be challenged within three years from the date when a

copy thereof was served upon his client, is contrary to law. The period of limitation to challenge any instrument is three years from the date of knowledge. Admittedly, the knowledge was the date of service of written statement i.e. August 2/3, 2016.

Under such circumstances, this court does not find that the learned Trial Judge had either acted illegally or with material irregularity in rejecting the prayer for amendment, inasmuch as, the plaintiff by way of the said amendment, sought to challenge an instrument beyond the period of three years from the date of his knowledge.

Further contention of Mr. Ray is that unless the material particulars were available, it was not possible to challenge the deed. In my view, it was the plaintiff's duty to obtain necessary information within the period of limitation and file the application with necessary prayers, challenging the deed. Limitation at times, may be mixed questions of law and fact. In such cases, if elaborate discussions or deliberations or appreciation of evidence are required to decide the question of limitation, amendments may be allowed. However, when the amendment appears to be ex facie barred by law, the question of allowing incorporation of a time barred claim by way of an amendment, should not be allowed.

In the decision of ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited & Anr.*** decided in ***Civil Appeal No. 5909 of 2022***, the Hon'ble Apex Court laid down the principles governing amendment, in paragraph 70 of the decision. The relevant portion is quoted below:-

(iii) The prayer for amendment is to be allowed:-

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

The revisional application is thus dismissed.

The rejection of this revisional application will not prevent the plaintiff from proceeding in accordance with law and contesting the suit at the trial, by raising all points, available in law.

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

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)