

S/L 70
17.3.2023
Court No.652
SD

CO 3748 of 2019

Biman Kumar Nath & Ors.
Vs.
Pankaj Saha

Mr. Dyutiman Banerjee
Mr. Arnab Sinha
Mr. Amartya Basu

...for the Petitioners.

Mr. Debabrata Roy
Mr. Rishabh Ahmad Khan

...for the Opposite Party.

Affidavit of service filed by the petitioners be kept with the record.

Being aggrieved and dissatisfied with the order dated 16.4.2019 passed by the learned Civil Judge (Senior Division), 10th Court, Alipore in Title Execution No.29 of 2018, arising out of Title Suit No.58 of 2010, present application under Article 227 of the Constitution of India has been preferred.

The petitioners contended that the petitioners as plaintiffs filed the said suit for eviction, arrear license fee and damage against the opposite party herein.

In the said suit, the plaintiffs made out a case that one Biman Kumar Nath and Tapan Kumar Nath were the joint owners of the suit property and they granted license to the defendant for a period of three years. The agreement for license was never constituted as agreement of lease and defendant has neglected to pay the licence fee from July

2007 and therefore, the plaintiffs have asked the defendant to quit and vacate the suit property after revoking license by sending a notice. As defendant in spite of receipt of notice failed to vacate the suit property, the plaintiffs filed the abovementioned suit. The opposite party/defendant contested the suit by filing written statement and denied all material allegations. The trial court vide its judgment and decree dated 28.02.2018 decreed the suit in part on contest against the defendant and directed the defendant to quit and vacate the suit property within a period of 90 days. As defendant failed to vacate the suit property, the petitioners put the decree in execution, which was registered as Title Execution Case No.29 of 2018.

In the said execution proceeding, the plaintiffs/decreed-holders filed an application on 13.7.2018 under Section 151, 152 and 153 read with Order XX Rule 6 and 9 of the Code of Civil Procedure for incorporation of the address of the suit property including the boundary of the suit property in the decree and making correction of suit number and date in the cause title of judgment.

Learned court below vide its impugned order dated 16.4.2019 was pleased to reject the said application holding that said address is not included in the plaint and that the application has been filed at a pre-mature stage and it is not specific which part of the provision is not in the decree, the provisions of Order XX Rule 6 does not apply in the present case.

Learned counsel appearing on behalf of the petitioners submits that the learned court below acted illegally in rejecting the application of the petitioners without considering that if the schedule of the decree is not corrected at this stage, then the decree may become inexecutable. Learned court below failed to appreciate that without the premises number of the suit property in the decree, baliff may not be able to deliver possession in favour of the decree-holder. Accordingly, he has prayed for setting aside the order and for direction to make necessary correction in the judgment and decree.

In support of his contention, he has relied upon ***Muni Lal vs. The Oriental Fire & General Insurance Company Ltd. & Ors.*** reported in ***AIR 1996 SC 642***.

Learned counsel appearing on behalf of the opposite party submits that Order XX Rule 9 says, where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficiently to identify the same and the decree shall satisfy such boundaries or numbers where such property can be identified by boundaries or by numbers. But in the present case, plaintiffs having been failed to incorporate the same in the schedule of the plaint, cannot seek for such amendment at this stage after passing the judgment and decree and as such, the court below rightly observed that the prayer for amendment in the judgment and decree as sought for by the plaintiffs/petitioners cannot be allowed at this stage.

In the present case, it appears from the schedule of the amendment made in the application under Section 151, 152 and 153 of the Code of Civil Procedure that in the first paragraph of the schedule, the plaintiffs/decreed-holders only wants to correct and incorporate the year of the suit and date of delivery of judgment which is merely a typographical mistake and should have been allowed.

So far as the second part of the schedule of the amendment is concerned, it relates to the addition of premises number as well as boundary of the premises in question, to make it elaborate.

I have gone through the plaint filed in the said suit and it appears that in the first two paragraphs of the plaint, the plaintiff has mentioned that Biman Kumar Nath and Tapan Kumar Nath were the joint owners of premises No.31, Hindusthan Road, P.S.-Gariahat, Kolkata-700029 and the said persons on 01.8.2006 granted licence to the defendant who is proprietor of Simco Knitting and Sewing Machine Company for a period of three years. In paragraph 6 they have also given detailed description of the suit property pertaining to license where the defendant uses to run his business in the suit property. Under paragraph 6, the suit property pertaining to license consists of old one mezzanine floor room, dining space, kitchen, bath cum privy, the front verandah cum entrance will be of common use of both licensees and licensor, one key of entrance will be kept by both parties which is called as suit property.

I have also gone through the copy of written statement and from the written statement I find that the defendant has never disputed the portion occupied by him in the suit property. Their main dispute as appearing from the written statement was that according to the plaintiffs, the defendant is a licensee and on the contrary, the defendant's contention was that he is occupying the said property as a monthly tenant since 1988 and the defendant has been occupying the suit property continuously for about 23 years on payment of rent regularly. The defendant dealt with aforesaid contents of paragraph 6 of the plaint as matter of record in paragraph 5 of the written statement.

In the judgment delivered in connection with the suit also it appears that in page 2 of the judgment, court below stated that plaintiff's case is defendant is a licensee in respect of one room, one mezzanine floor room, dining space, kitchen etc. which was granted by joint owners of Premises No. 31, Hidustan Road, P.S- Gariahat. The court below has also referred the defendant's written statement where defendant has come up with positive defence that the defendant has been using the ground floor to the suit property as his office as a monthly tenant thereof since 1994. Nine issues were framed while disposing the said case and none of the said issues relates to dispute about the extent of possession of the defendant in respect of the suit property. Defendant in spite of receiving letter revoking license has not

denied or disputed his occupied portion by giving reply to that letter.

It further shows that deed of license has been marked as Exhibit 1 in the said case. In page 10 of judgment also the court below observed that the defendant has three limbs of argument. One is agreement dated 01.8.2006 is not an agreement for license rather it is an agreement for lease, the second limb is the defendant is admittedly in occupation of the suit property from much prior date of the agreement and for that no new right is created in favour of the defendant by the agreement dated 01.8.2006 and there is no document regarding the nature of the occupation of the defendant prior to 01.8.2006 for that it must be presumed that it is a tenancy and third limb of the argument of the defendant is where the agreement dated 01.8.2006 is accepted by the court as document of licence. Accordingly, there is no dispute between the parties about the portion of the property possessed by the defendant.

It has also been stated in the said petition under Section 151, 152, 153 of the Code that both plaintiffs and defendant during evidence have marked certain documents as exhibit which clearly reflect the address and description of the suit property. Such documents marked as exhibit on behalf of defendants are exhibits A, B, C, D, D, F, G, H and I, which also includes telephone and broadband bill of defendant showing address as 31, Hindustan Road, P.S- Gariahat, Kolkata-29, West Bengal.

It has also been stated in the petition that PW1 in his evidence stated that the defendant is running the office in the ground floor of the suit building having premises No.31, Hindusthan Road, Gariahat, Kolkata-700029 and the said PW1 further admitted that the defendant is occupying one room, some vacant space, one kitchen, one bathroom in the ground floor and defendant also occupies one mezzanine floor of the suit building as part and parcel of the office which is the suit schedule property. So, the suit property has been sufficiently described by both the parties in their oral and documentary evidence apart from pleading.

It is true that in schedule portion of plaint, the address has not been given in details, but such typographical/clerical error, which are not legal errors but accidental omission and which requires no review and has been crept in through inadvertence, can be corrected under Section 151 and 152 of the Code. The test to determine whether the slip or omission is accidental or not is to see whether the order as it stands represents the intention of the Judge, at the time when he made it. Accordingly, in the present case when the judgment was passed the intention of the Judge is to direct the defendant to quit and vacate from the portion occupied him and which is the subject matter of suit. Accordingly non-description of detailed address of the suit property in plaint is merely an accidental slip and/or omission. Now where there is such accidental slip or omission in manifesting the intention of the court by

couching the reliefs to which, the plaintiffs were entitled in the event of their succeeding in the suit, Section 152 of the Code enables the court to make such correction and add such description in the judgment and decree respectively, so as to give effect to it's meaning and intention. Accordingly, I am of the view, where the decree has overlooked to mention the address of the suit premises, though mentioned in the body of judgment, this was apparently an accidental omission, which was certainly within the competence and jurisdiction of the executing court under section 152 of the Code to add details of undisputed address of the suit property with the boundary in the decree and also to correct year mentioned in cause title of judgment.

Since this is purely a case of accidental omission in describing the schedule of the plaint and cause title of judgment, the court below should have been corrected and added by allowing the application filed under Section 152 of the Code of Civil Procedure.

In view of the above, CO 3748 of 2019 is allowed.

The order dated 16.4.2019 passed by the learned Civil Judge (Senior Division), 10th Court, Alipore in Title Execution No.29 of 2018 arising out of Title Suit No.58 of 2010 is hereby set aside.

The court below is directed to make necessary correction in the judgment as per first schedule of petition and to add detailed address in the decree as per second

schedule of the petition within a period of four weeks from the date of communication of the order.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)