

17.07.2023
Sl. No.1(DL)
srm

C.O. No. 3200 of 2022

Badsha Ansary & Ors.

Versus

Nasir Ansary & Ors.

Mr. Rajdip Roy,
Mr. Madhusudan Mandal

...for the Petitioners.

Ms. Mousomee Shome,
Mr. Subhajit Das

...for the Opposite Party Nos.1, 3 to 7.

This revisional application has been filed challenging an order dated August 10, 2022 passed by the learned Civil Judge (Junior Division) at Raghunathpur, District-Purulia, in Title Suit No.95 of 2015.

By the order impugned, the learned court below rejected an application for amendment of the plaint on the ground of delay. The learned court below was of the view that as the suit was at the stage of evidence, such amendment could not be allowed.

The learned Advocate for the petitioners submits that the factum of dispossession during the pendency of the suit and in the teeth of the order of injunction passed by both the learned courts below, and the prayer for recovery of

possession was required to be incorporated for complete adjudication of the matter. That due to changed circumstances and subsequent events, the real controversy could not be decided without incorporating such facts and prayers. Moreover, the relief claimed in the suit, if granted, would not result in complete redressal of the grievances of the petitioner.

It is submitted by the petitioner that as the Civil Misc. Appeal No.06 of 2016 was going on before the learned Additional District Judge, Raghunathpur, Purulia, and the parties were contesting the said appeal up to 2019, due to inadvertence, such amendment was not filed earlier although such dispossession started taking place on and from 2016 and was a continuing one.

Having considered the rival contentions of the parties, this Court finds that both the learned courts below while deciding the matter of injunction had found the petitioners to be in possession and had restrained the defendants from dispossessing and/or interfering with the nature and character of the suit property. The fact that the defendants were trying to raise a construction, was also recorded by the learned courts and as such, the petitioners had established a *prima facie*, case that the property should be protected. Accordingly the order of injunction was passed and upheld in the Misc Appeal. At

this stage, the factum of continuous and gradual dispossession and the prayer for recovery of possession are required to be incorporated in the plaint, otherwise the suit cannot be decided effectively and completely. There will be no finality to the litigation. Rejection of the amendment will also lead to multiplicity of proceedings.

The petitioners have contended that the process of dispossession started sometime in 2016. The prayer for recovery of possession is not barred by the laws of limitation.

In the leading English case of *Cropper v. Smith*, the objection underlying amendment of pleadings has been laid down by Browne, L.J. in the following words:-

“... it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace. ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right.”

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 of governing amendment in paragraph 70 of the decision. The relevant portion is quoted below:-

(ii) All amendments are to be allowed which are necessary for determining of the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(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,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal

especially where the opposite party can be compensated by costs."

Reliance is placed on the decision of *Raghu Thilak D. John vs. S. Rayappan* reported in *AIR 2011 SC 699*, it was held that amendment should generally be allowed, unless it was shown that permitting the amendment would be unjust and would cause prejudice to the opposite side, which could not be compensated by costs or would deprive him of a right which had accrued to him with the lapse of time. Amendment may also be refused if the same is barred by time.

In the decision of *Rajesh Kumar Aggarwal and others vs. K.K.Modi and others* reported in *AIR 2006 SC 1647*, the Apex Court held that the Court was not to go into the merits. The relevant portion is quoted below:-

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

A liberal view is required to be taken when amendment applications are decided. Although, the learned Advocate for the opposite parties submits that the amendment should not

be allowed at such a belated state, in my view, the opposite parties will not be prejudiced in anyway, if they are compensated by cost. Cost of Rs.5000/- be paid to the defendants and/or their learned Advocate within two weeks from date.

Under such circumstances, the amendment application is allowed. The order impugned is set aside.

The petitioners will file the amended plaint within a period of three weeks from date provided the cost as directed is paid. Additional written statement be filed within two weeks thereafter.

Separate issues, if necessary, may be framed on account of the amendment and the parties shall also be allowed to adduce further evidence on the facts incorporated by way of the amendment.

The revisional application is, thus, disposed of.

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

(Shampa Sarkar, J.)