

IN THE HIGH COURT AT CALCUTTA
Jalpaiguri Circuit Bench
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

CO 129 OF 2023

Pradip Kumar Jha

Versus

Smt. Sunali Mazumder Mandal @ Sunali Mazumder & Ors.

For the Petitioner : Mr. Abhijit Raha, Adv.
Mr. Rahul Kedia, Adv.
Mr. Ajay Singhal, Adv.
Sheikh Heena Yasmin, Adv.

For the Opposite Party No. 1 : Mr. Subham Sarkar, Adv.

Heard on : 12.10.2023

Judgment on : 17.10.2023

Ajay Kumar Gupta, J:

1. This is an application filed under Section 227 of the Constitution of India by the petitioner praying for setting aside an order No.13 dated 1st September, 2023 passed by the learned Civil Judge (Jr. Division) at the Jalpaiguri in Title Suit No.404 of 2022, thereby the trial Court allowed amendment of the plaint in an application filed under Order 6 Rule 17 read with Section 151 of the CPC, 1908 on contest subject to payment of costs of Rs.1000/=.

2. It is the contention of the petitioner/Defendant no.1 that the Opposite Party/plaintiff has filed a title suit against the present petitioner including other defendants for declaration and injunction and other consequential reliefs on 1st September 2022. In the said suit present petitioner duly appeared and filed his written statement denying all material facts and allegations. Petitioner further contended that the dispute regarding the suit property was in respect of Plot No. 334 measuring an area 2110 Sq.ft purchased and owned by the Plaintiff by virtue of deed of conveyance no.263 of the year 2022. Whereas, Petitioner disclosed in his written statement that he is the owner and possessed of another plot number 333 measuring an area 2 Katta 14 chattaks 36 Sq.ft. form part of Plot No. 627/1057, corresponding to L.R. Plot No. 333, recorded in R.S Khatian No. 714 Corresponding to L.R. Khatian No.736,

situated within Mouza -Dabgram, R.S. Sheet No. 8, Corresponding to L.R. Sheet No. 44, Parganas Baikunthapur, PS Baikanthapur, District Jalpaiguri by virtue of the deed of conveyance No. 1973 for the year 2022 registered in the office of District sub- registrar Jalpaiguri. Petitioner is no way connected and has nothing to do with Plot No. 334.

3. It is further contended that opposite party No. 1 in collusion with opposite party No. 7 (proforma defendant in the title suit) filed another suit being title suit No. 478 of 2022 before the learned civil Judge, (Jr division) Jalpaiguri against the petitioner and others suppressing the fact that the said opposite party No. 7 had already sold the property to opposite party No.1 in respect of Plot No.334.

4. When the opposite party No. 1 came to know after filing written statement by the petitioner that the present petitioner is the owner and possessed a plot No.333, measuring an area 2 Katta 14 chattaks 36 Sq.ft. form part of Plot No.627/1057, recorded in R.S Khatian No.714 Corresponding to L.R. Khatian No.736, situated within Mouza -Dabgram, R.S. Sheet No.8, Corresponding to L.R. Sheet No.44, Parganas Baikunthapur, PS Baikanthapur, District Jalpaiguri. He came with an application for amendment of plaint under order 6 rule 17 of the code of civil procedure, 1908 before the trial court. Opposite party No. 1 set her

eyes upon the land of the petitioner as it came to knowledge that her plot Number is 334, which is in possession of some other person and already erected a building therein. Vide deed of declaration executed in her favour on 29.12.2022 by the previous vendor during pendency of the suit, LR plot No 334 appearing in the her deed No. 263 for the year 2022 be read as 333 though the said plot is belongs to the petitioner. Petitioner filed an application for amendment of the plaint even after expiry of 7 months of such declaration. It is the intention of the Opposite party no.1 to grab the land of the Petitioner in any manner. The learned trial Court without considering the case of the petitioner allowed the said application filed under order 6 rule 17 read with section 151 of the Code of Civil Procedure as casual manner subject to payment of cost of Rs. 1000/= though it ought to be rejected on the basis of facts and circumstances of present case.

5. The learned advocate appearing on behalf of the petitioner submitted and raised the following grounds in his favour in order to set aside the said impugned order dated 1st September, 2023 passed by the learned trial court.

- a) An application for amendment ought not to be allowed since nature and character of the suit has been changed

and proposed amendment introduced a new cause of action.

b) After filing of written statement by the Petitioner it discloses the fact that the petitioner is the owner and possessed Plot Number 333, she immediately with malafide intention wants to change the Plot No. 333 from plot Number 334 in the plaint with intention to grab the property of the petitioner. It should not be allowed by way of amendment when the opposite party No.1 did not come with clean hands before the Ld. Court.

c) If the impugned order would not be set aside it would cause grave injustice and prejudice to the petitioner because the suit was earlier filed in respect of other suit land being Plot No.334 and cause of action arose on such suit land mentioned in the schedule of the plaint but learned court below has failed to understand that the effect of the proposed amendment would take away the legal right of the petitioner.

d) An application for amendment was malafide.

6. On the other hand, learned advocate appearing on behalf of the opposite party No. 1 strenuously argued and submitted that the trial court has rightly allowed an application filed Under Order 6 rule 17 for amendment of the plaint as the stage of suit was before commencement of the trial. Furthermore, it would not change the nature and character of the suit or cause any prejudice to the petitioner because the amendment sought for is only in respect of the plot number but entire averment of the plaint, cause of action and prayer are more or less similar. The prayer of amendment has been allowed by the trial court to ensure effective and proper disposal of the suit after hearing of the parties subject to condition for payment of costs of Rs. 1000/= as such the present application is required to be dismissed in limini.

7. Heard the submissions made by the parties and on perusal of the record as well as the impugned order under challenge in this revisional application, this Court finds the petitioner wanted to incorporate a plot no. 333 in place of plot no.334 on the basis of declaration executed in her favour on 29.12.2022 during pendency of the suit. LR plot No 334 appearing in her deed No. 263 for the year 2022 be read as 333. Petitioner had filed an application for amendment of the plaint even after expiry of 7 months of such declaration without any explanation. Initially, the opposite

party no.1 filed the suit for declaration and injunction and other consequential reliefs in respect of the plot No.334 but subsequently after filing written statement she came to know about the actual state of affair that the petitioner is the owner and possessed the said plot no. 333. Thereafter, opposite party filed application for amendment of plaint to change the plot no. 333 in place of plot no. 334.

8. Before deciding the case in hand, it would be appropriate to mention the provision of Order 6 Rule 17 of the CPC for ready reference:

“Amendment of pleadings.- *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

9. Upon perusal of the provision as laid down in Order 6 Rule 17 of the Code of Civil procedure, 1908 it reveals all amendments are to be allowed which are necessary for determining the real question in

controversy provides a plea does not cause injustice or prejudice to the other side.

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 the claim would be time barred becomes a relevant factor for consideration,
- ii) The amendment which changes the nature and character of the suit, or cause of action, so as to set up an entirely new case.
- iii) the prayer or amendment is malafide, or
- iv) by the amendment, the other side loses a valid defence,

10. This Court is very conscious that in the instant case the amendment was sought before commencement of trial. Moreover, there is an option to file additional written statement by the petitioner so the Court is required to be liberal in its approach. Delay in applying amendment alone is not ground to disallow the prayer, where the aspect of delay is

arguable and amendment may be justifiably allowed where it is intended to rectify the absence of particulars in the plaint. But here the case is different opposite party No. 1 had filed an application for amendment after correction of the deed of conveyance during pendency of the suit. Earlier subject matter of the instant suit was in connection with Plot no.334. Opposite party no.1/plaintiff had filed suit claiming declaration, injunction and other consequential reliefs in respect of plot Number 334. Subsequently he wanted to change plot Number as 333 though the cause of action arose as claimed earlier by the opposite party in respect of plot Number 334. If the amendment is allowed, nature and character of the suit and cause of action would definitely change because the plaintiff had filed a suit claiming plot No. 334 belongs to the plaintiff. opposite party no. 1 also claimed dispute and cause of action arose between the parties in respect of plot No. 334. Plaintiff also seeks reliefs in respect of plot No. 334 but now in plot no. 333, it is beyond the scope of amendment because nature and character of the suit as well as cause of action would be changed and the Opposite party set up an entirely new case as such amendment ought not to be allowed. Apart from that effect of the proposed amendment would take away the legal right of the petitioner causing serious prejudice to the petitioner. Intention of the opposite party no. 1 towards amendment of plaint appears not a bona fide.

11. Accordingly, the aforesaid impugned order dated 1st September, 2023 passed by the learned Civil Judge (Jr. Division), Jalpaiguri is hereby set aside.

12. Accordingly, **C.O. 129 of 2023** is, thus, disposed of.

13. There shall be no order as to costs.

14. Let the judgment and order of this Court be communicated to the Trial Court for information.

15. Urgent photostat certified copy of this Judgment, if applied for, be supplied to the parties expeditiously upon compliance of all required formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)