

S/L 122
25.01.2024
Court No.652
SD

CO 391 of 2020

Md. Babur Ali Mondal
Vs.
Noor Ali Mollah & Ors.

Mr. Kishore Mukherjee
Mr. Soumyajit Mukherjee

...for the Petitioner.

Affidavit of service filed on behalf of the petitioner is taken on record. In spite of service, the opposite parties are not represented.

This application pertains to order impugned dated February 18, 2017 passed by learned Civil Judge (Junior Division), 1st Court, Basirhat in T.S. No.38 of 2014.

The petitioner contended that the petitioner as plaintiff filed aforesaid suit inter alia for declaration that the scheduled mentioned suit property is the exclusive property of the plaintiff and for an injunction restraining the defendants from dispossessing the plaintiff from the suit property. The defendants/opposite parties contested the suit by filing written statement.

Thereafter, the plaintiff made an application under Order VI Rule 17 of the Code of Civil Procedure for amendment praying for incorporating certain subsequent events in the plaint for effective and conclusive adjudication of the suit. However, the learned court below by the impugned order has been pleased to reject the said application for amendment of plaint mainly on the ground

that if the proposed amendment is allowed, the value of the suit will be increased and thereby it will oust the jurisdiction of the Court.

Being aggrieved by that order, Mr. Mukherjee, learned counsel appearing on behalf of the petitioner, submits that for the purpose of determination of real question in controversy between the parties, the proposed amendment is very much necessary and the proposed amendment, if allowed, will not oust the jurisdiction of the learned court below in any manner particularly when even after proposed amendment, the value of the suit will not exceed Rs.40,000/- .

I have considered the submissions made by the petitioner.

On perusal of the schedule of amendment application, it appears that the plaintiff by way of amendment wants to incorporate that during pendency of the suit, the opposite parties forcibly dispossessed them from 3.30 satak of land from the suit property and for which the plaintiff by way of amendment wants to incorporate that subsequent event in the plaint and thereby sought to incorporate prayer for permanent injunction and recovery of possession in respect of the alleged encroached portion.

Learned court below while passing the order impugned observed that the plaintiff in his amendment application has not mentioned the date of dispossession and they have also not taken any step when allegedly the defendants have violated the order of status quo. He further

observed that proposed amendment, if allowed, will oust the jurisdiction of the court below to try the suit.

Since palpably it is clear that the event which the plaintiff wants to incorporate by way of amendment is a subsequent event, the question as to whether the plaintiff has mentioned any specific date of dispossession or not, is not relevant for the consideration of amendment application because at this stage, the Court is not supposed to judge whether the averments made in the amendment application are true or not and whether plaintiff will ultimately succeed with that prayer or not.

Furthermore, even if for the sake of argument if it is presumed that after the proposed amendment, the value of the suit will increase and for that the jurisdiction of the court below may be ousted that also is not a ground for refusing the prayer for amendment. Merely the proposed amendment will take away the pecuniary jurisdiction of the Court, the amendment should not be refused. What the Court should do is to allow the amendment and to carry out the same in the plaint if it succeeds two cardinal tests:-

- (i) whether the amendment is necessary for the determination of the real question in controversy;
- (ii) can the amendment be allowed without injustice to other side.

If after such correction, modification regarding valuation of suit exceeds its pecuniary limits, it shall return the plaint to be presented before appropriate forum.

In such view of the matter, the order impugned is perverse and is not sustainable in the eye of law. Since in the present context, proposed amendment qualifies both the cardinal principles, the order impugned dated 18.02.2017 passed in T.S. No.38 of 2014 is hereby set aside.

The plaint is accordingly amended in terms of the schedule of the amendment application and the plaintiff is directed to file amended plaint within a period of three weeks from the date of communication of this order. After such amendment, if it appears to the court below that the valuation of the suit has exceeded its jurisdiction, the court below will be at liberty to invoke his power under Order VII Rule 10 of the Code of Civil Procedure.

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.)