

16.05.2024
Sl. No.1(DL)
srm

C.O. No. 698 of 2023
Aktari Begum & Ors.
Versus
Md. Feku & Ors.

Mr. Goutam Das
...for the Petitioners.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya
...for the Opposite Party Nos.1 to 4.

1. The revisional application has been filed by the defendants in Title Suit No.214 of 2013. They have challenged an order dated August 8, 2022 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah.
2. According to the defendants, the learned court had erroneously allowed amendment of the plaint. It is submitted that the suit was filed for declaration and permanent injunction. The plaintiffs sought for a declaration that they were tenants-in-common with the defendant No.1 in respect of the suit property. The cause of action arose when the defendant No.2 had illegally got rent receipt in his name and had also threatened the

plaintiff No.1, thereby, obstructing the ingress and egress of the plaintiffs to the suit property. In such a suit, an amendment was allowed at a belated stage. The plaintiffs were allowed to incorporate facts which were already within their knowledge. No explanation had been given as to why the said facts could not be brought on record when the plaint had been filed. Those facts were not subsequent events. They were averments relating to the interest of the plaintiffs in respect of the suit plot which they claim from their predecessor (maternal grandfather) through their mother.

3. The learned court allowed the said application on the ground that the amendment was neither *mala fide* nor vexatious. Allowing the said application for amendment would not cause any injustice to the defendants. The amendment was necessary for determining the real questions in controversy between the parties. The learned court also recorded that the trial had not commenced.
4. Admittedly, the plaintiffs filed the suit for declaration and permanent injunction tracing their right as tenants-in-common with the defendant No.1, through their maternal grandfather. It has been stated that the maternal grandfather used to run the meat shop measuring about

13ft x 11 ft., i.e. 143 sq.ft. on the road side at Premises No. 77/H/10, Narkeldanga North Road, Kolkata-700011. The shop was the subject matter of the suit. The maternal grandfather Mayna Shekjee died leaving behind his widow Abjun Bibi, his daughter Firoza Bibi and son Sk. Raja @ Md. Fafique. According to the Mohamedan Law of inheritance, all the children inherited the right of tenancy. Upon demise of Firoza Bibi, the right devolved upon the plaintiffs. The defendant No.1, in collusion with the other defendants, who were tracing their right from the son of the original tenant (maternal uncle of the plaintiffs) started disturbing the possession of the plaintiffs and denied their right in respect of the shop. Whenever the plaintiffs claimed their tenancy in respect of the shop room, they were threatened. Hence, the suit was filed.

5. By way of an amendment, an additional paragraph and prayers were sought to be incorporated, *inter alia*, that after the death of the maternal grandfather, the mother of the plaintiffs and the father of the defendants jointly ran the business from the shop room and the profits were shared equally. After the demise of the maternal uncle and the plaintiffs' mother, the defendants started creating

pressure and ensured that the business should be operated by them alone. The plaintiffs were resisted from participating in the joint business. A further prayer was sought to be incorporated, *inter alia*, restraining the defendants from obstructing the plaintiffs in participating in the business.

6. The contention of the learned Advocate for the petitioners/defendants that the plaintiffs were not in possession of the property in question and the plaintiffs did not have any interest in respect of the shop room. The plaintiffs' mother did not run the business jointly with her brother, rather she surrendered her tenancy.
7. It is submitted that the property was a thika property and amendment should be rejected, as the same would amount to changing the nature and character of the suit property.
8. Mr. Debjit Mukherjee, learned Advocate for the plaintiffs/opposite party Nos.1 to 4 submits that the contentions of the petitioners with regard to their interest in the suit property are matters of trial. Issues had not been framed. Thus, proviso to Order VI Rule 17 of the Code of Civil Procedure would not be applicable.

9. I find from the reading of the plaint that the plaintiffs had claimed to be tenants-in-common with the defendant No.1, in respect of the shop room. They have traced their status from their maternal grandfather, who was the original tenant in respect of the shop room, and thereafter from their mother, upon demise of their maternal grandfather and grandmother.
10. Whether the mother of the plaintiffs was a tenant; whether the plaintiffs were tenants-in-common with the defendant No.1 or whether the mother of the plaintiffs had surrendered her tenancy to the landlord, are all matters of trial. The issue of thika tenancy is also not before this Court. The defendants can always take whatever defence they are entitled to, in accordance with law and also pray for necessary reliefs and orders.
11. The only contention before this Court is whether the amendment was rightly allowed or not.
12. Admittedly, the amendment sought to be incorporated does not change the nature and character of the suit. All that was sought to be brought on record was that the maternal uncle of the plaintiffs and their mother were jointly running the business after demise of the maternal grandfather and grandmother and they were sharing the

profits. Along with such statements, further prayer was sought to be incorporated that the defendants should be restrained from creating any obstruction in the plaintiffs' participation in the joint business.

13. The learned court rightly allowed the application for amendment, as the statements to be incorporated were further elaboration of the plaint case. No new cause of action was sought to be urged. The amendment was allowed at a pre-trial stage.

14. The Hon'ble Apex Court in the case of ***Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and others*** reported in **(2007) 6 SCC 737**, held that if the amendment enables the Court to pin-pointedly consider the real dispute between the parties and helps to decide the case more satisfactorily, the amendment ought to be allowed.

15. In the case 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 is 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.

16. 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 on similar lines and directed 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."

17. 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 portions are 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.”

18. Under such circumstances, the revisional application is dismissed.

19. There shall be no order as to costs.

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

(Shampa Sarkar, J.)