

Item No.2
07.03.2024
Court. No. 19
GB

C.O.865 of 2023

Joynal Abedin Khan @ Joynal Khan & Anr.
VS
Noor Islam Kha & Ors.

Mr. Sandip Das

...for the Petitioners.

*Mr. Shyama Prasad Purkait,
Ms. Moumita Mondal*

...for the Opposite Party Nos.1 to 6.

1. The revisional application is directed against an order dated December 6, 2022, passed by the learned Civil Judge (Junior Division), 3rd Court at Diamond Harbour in Title Suit No.37 of 2015.
2. By the order impugned, the learned court rejected an application for amendment of the written statement. The said application for amendment was filed by the defendant no.4. The learned court rejected the said application on the following grounds:-
 - a) The defendant no.4/petitioner could not show a single reason as to why the said facts could not be brought earlier.
 - b) The amendment introduced a whole new story regarding the title of the defendants.
 - c) The defendant no.4 did not find it necessary to even provide a single reason for not incorporating such facts earlier.
 - d) The entire defence case and the nature and character of the suit would be changed.

3. Mr. Das, learned advocate appearing on behalf of the defendant no.4 submits that by the proposed amendment, paragraph nos.15 to 19 of the written statement was sought to be deleted and fresh averments were sought to be incorporated. According to Mr. Das, the amendment application was filed even before the issues were framed.
4. Thus, the contention of the learned court that the defendant no.4 had failed to assign any reason as to why the facts which were already known to the said defendant, could not be brought on record when the written statement was filed, was based on a misreading of the proviso to Order 6 Rule 17 of the Code of Civil Procedure. A pre-trial amendment is not hit by the proviso. The exercise of due diligence and the inability of the defendant no.4 to incorporate such facts in the written statement when it was originally filed, was not the mandate of the law. Secondly, in a written statement, a defendant could incorporate alternative pleas, inconsistent pleas and contrary pleas. An amendment of a written statement should be allowed liberally.
5. The defendant No.4, in the original written statement had claimed right, title and interest in the suit property by way of inheritance from Rupchand Bibi. In paragraph nos.15 to 19 the entire history as to how the defendants had inherited the right, title and interest through Rupchand Bibi by tracing the

inheritance from their predecessor Dhan Bibi, who was the actual owner, had been narrated. Such narration was sought to be deleted and the defendant no.4 wanted to incorporate pleadings that the suit property had been obtained by purchase from some other party. The said fact could not be brought on record on the ground that the copies of the deeds of conveyance were not shown to the learned advocate and the learned advocate was not properly instructed.

6. Mr. Purkait, learned advocate for the plaintiffs opposes the revisional application and submits that in paragraph 19 of the said written statement there was an admission that Title Suit No.54 of 2007 was contested by between the parties and the right, title and interest of the defendants had been declared in the said suit. The factum of inheritance of the plot and also the decree passed in the title suit were sought to be deleted and a new case was sought to be made out with regard to the right, title and interest in the property, by purchase from other party.
7. According to Mr. Purkait, introduction of new facts upon deletion of the earlier defence case amounted to changing the nature and character of the suit and the new case could not be allowed to be brought on record.
8. Having heard the learned advocates for the respective parties, I find that the plaintiff nos.1 to 5 claimed right, title and interest in respect of the suit property

by way of purchase from another party and the plaintiff no.6 claimed title in respect of the suit property by inheritance. This is a suit for declaration of title and permanent injunction against the defendants. Originally, the defendant No.4 claimed title through inheritance from Rupchand Bibi and had traced the right, title and interest by way of inheritance from the original owner, Dhan Bibi. He had also mentioned about a title suit in which the right, title and interest of the defendants were allegedly declared. By the amendment, the defendant No.4 wanted to delete the entire narration of inheritance and wanted to incorporate pleadings claiming their right, title and interest on the basis of conveyances.

9. Although, Mr. Purkait submits that the pleas are inconsistent and contrary to what had been stated earlier, this Court is of the view that the suit for declaration and injunction filed by the plaintiff remains the same. Irrespective of how the defendant No.4 claims title to the property, the plaint case is neither displaced nor dislodged. It is not a situation where the trial had commenced. Evidence was before the court and the mind of the court had not been applied. The subsequent incorporation of the factum of purchase of the property would not cause injustice to the plaintiffs.

10. Under such circumstances, I do not find any reason not to allow the amendment. The order impugned is set aside. Reference is made to the decision of ***Sushil Kumar Jain versus Manoj Kumar & Anr.*** reported in ***AIR 2009 Supreme Court 2544*** to substantiate that amendment of a written statement should be allowed liberally. Amendment of a written statement and amendment of the plaint do not stand in the same footing. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action in the plaint. Admission made by a party in a written statement may also be withdrawn or may be explained.
11. Under such circumstances, the revisional application is allowed.
12. The amended written statement shall be filed within a period of four weeks from the date of communication of this order.
13. However, there shall be no order as to costs.
14. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)