

25.04.2024
Sl. No.24(DL)
srm

C.O. No. 937 of 2024
Dr. Tushar Kanti Karmakar
Versus
Smt. Mita Basu Karmakar & Anr.

Md. Hussain,
Mr. Kamal Das,
Mr. Subir Banerjee,
Ms. Shweta Singh,
Mr. Sudipta Mandal,
Ms. Dipanwita Das

...for the Petitioner.

Mr. Udaynarayan Betal,
Mr. Mriganka Patra

...for the Opposite Party No.2.

1. The revisional application arises out of an order dated February 8, 2024, passed by the learned Civil Judge (Junior Division), Additional Court at Ghatal, Paschim Medinipur, in Misc. Pre-emption Case No.1 of 2021.
2. By the order impugned, an application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure was rejected. The petitioner/preemptor prayed for amendment of pleadings in order to incorporate the factum of grant of a sanction plan sometime in 2009.
3. The learned court rejected the said application on the ground that the amendment was neither necessary nor

relevant for determination of the issue of preemption.

Secondly, trial had commenced and the amendment was barred under the provisions of law.

4. The petitioner contended that although the land was a single plot, the same was purchased by two separate deeds in order to avoid unnecessary complications. The jointness of the property did not change. A portion was sold by the opposite party No.1 and the sale could be pre-empted by the petitioner, being a co-sharer. For cessation of the element of co-sharership, the partition should be effected specifically in terms of the West Bengal Land Reforms Act, 1955.
5. The learned Advocate for the petitioner contends that in order to prove the jointness of the property, the fact that the parties together applied for a sanction plan from the municipality and the sanction was also granted for construction on the two plots, indicated that there was an amalgamation of the plots.
6. The learned court failed to appreciate such contention and rejected the application for amendment only because the trial had commenced. The original sanction plan remained with the opposite party No.1 and the copy of the same was received sometime in 2022. Thus, the

application for pre-emption did not contain such averments.

7. It is urged that the amendment would neither change the nature and character of the proceedings nor would it cause any hardship to the opposite party.
8. Mr. Betal, learned Advocate for the opposite party No.2 submits that by two separate deeds, two plots were purchased. Even if the parties were husband and wife, the jointness of the properties could not be determined on the basis of the relationship. Mr. Betal further submits that a partition suit was filed which came up to the High Court and a Hon'ble Division Bench opined that each of the plots were purchased by the parties which had specific boundaries and could not be treated as joint property. Accordingly, the preliminary decree granted by the learned trial judge was dismissed by the High Court. It appears that a review from the said judgment is pending.
9. The moot question which falls for a decision in the revisional application is whether at the stage of examination-in-chief of the petitioner, the sanction granted in 2009 should be allowed to be incorporated in the pleadings and tendered in evidence.

10. The proviso to Order VI Rule 17 of the Code of Civil

Procedure states as follows:-

“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”

11. Undoubtedly, amendments should be allowed liberally.

However, a proviso was incorporated in Order 6 Rule 17 of the Code of Civil Procedure, to prevent abuse of the process of court and put an end to the tendency of litigants to drag suits.

12. The proviso states that no application for amendment should be allowed after trial had commenced, unless the court would come to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

13. In my opinion, the petitioner had to satisfy the condition precedent, before the amendment could be allowed. The trial had commenced. The petitioner should have established before the court that in spite of due diligence, he could not have raised the matter before commencement of trial. The court too, must arrive at a conclusion with reasons, that in spite of due diligence

the contents of the amendment application could not be brought on record.

14. In my opinion, paragraph 5 of the application for pre-emption already explains why, according to the petitioner, the property was always treated as joint property of the parties and the parties jointly had been sanctioned a plan, for construction of the boundary wall. The property had a single gate. Thus, an additional document to show that a building construction was permitted, is not relevant for determination of the issue. The petitioner has to prove co-sharership as also contiguous ownership on the basis of his documents which are on record and which must be proved in evidence. In paragraph 5 there is a pleading that the parties had intended to use the property jointly.

15. In **M. Revena vs. Anjanamma (Dead) BY LRS. & ors** decided in **Civil Appeal No.1669 of 2019**, the Hon'ble Apex Court held that the proviso to Order 6 Rule 17 to some extent curtails the absolute discretion to allow amendment at any stage. Therefore, the burden would be on the person who sought to file an application for amendment after commencement of trial, to show that in spite of

due diligence such amendment could not have been prayed for earlier.

16. Amendment could not be claimed as a matter of right under all circumstances. Though normally, amendments are allowed, in order to avoid multiplicity of litigation, the court needs to take into consideration whether the application had been made bona fide or mala fide and also whether the amendment would cause prejudice to the other side.

17. In the decision of **Live Insurance Corporation vs. Sanjib Builders Pvt. Ltd. and anr.** reported in **2022 8 SCR 1121** the Hon'ble Apex Court summed up the parameters for grant of amendments in Paragraph 70. The relevant portion is quoted below:-

“...(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,..."

18. In the instant case, the learned trial judge refused to exercise discretion, upon holding that the amendment was barred by the proviso to Order 6 rule 17 of the Code of Civil Procedure.

19. In **Revajitu Builders** reported in **2009 10 SCC 2009**, also laid down the principles as follows:-

"Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."

20. The court held as follows :-

"64. The decision on an application made under Order 6 Rule 17 is a very serious

judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

21. In my view, an amendment after commencement of trial should be allowed on two conditions, i.e. (a) discovery of an information or document after the trial commenced and in spite of due diligence, the party seeking to amend the pleadings, could not have produced and (b) when the amendment was absolutely necessary for a pinpointed decision of the issues involved. In this case, neither of conditions is satisfied.
22. The petitioner was allegedly a joint applicant for the sanction. He knew about the sanction, but he failed to mention about the same. Secondly, the grant of a sanction at the behest of the parties in respect of a contemplated project on the land would not be relevant in the pre-emption proceeding. Co-sharership and contiguous ownership would have to be proved on the basis of the other documents, i.e., the title deed, record of rights, the other documents, municipal mutation, etc.
23. Accordingly, the revisional application is dismissed.

24. This order is restricted to the disposal of the revisional application and will not prevent the petitioner from taking appropriate steps in accordance with law during the evidence.

25. There shall be no order as to costs.

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

(Shampa Sarkar, J.)