

Item No. 31
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 1703 of 2022

**Smt. Baby Roy Chowdhury & Ors.
Vs
Smt. Sita Santholia & Ors.**

Mr. M. Rahaman,
Mr. Sankar Paul.
Ms. Kumari Shipra Roy.

... For the petitioners.

1. The instant revisional application has been preferred challenging the Order No. 219 dated 16.02.2022 passed in Ejectment Suit No. 212 of 2002 by the learned Judge, 5th Bench Presidency Small Causes Court, Calcutta, wherein learned Judge refused the application for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure holding, inter alia, that the judgement and decree passed in Title Appeal No. 51 of 2008 was further affirmed up to the First Miscellaneous Appeal before the High Court being F.M.A. No. 48 of 2011 and no effort was taken by the plaintiffs/petitioners herein for a considerable period and that ground learned Trial Judge refused to entertain the amendment of the plaint.

2. Mr. M. Rahaman, learned counsel appearing on behalf of the petitioners has submitted that the amendment application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure was filed with a prayer for amendment of boundary of the schedule to the plaint particularly regarding a mistake between the northern and southern side of the suit land. It is submitted that mistakenly northern boundary was reversed with the southern boundary and vice versa.
3. It is submitted that at the time of execution of the decree, possession could not be handed over due to mistake in the boundary mentioned in the schedule to the plaint and that is why the amendment application was filed seeking amendment of boundary of two sides i.e. northern and southern.
4. In support of his contention, learned counsel appearing on behalf of the petitioner has relied on a decision reported in **2009 (4) ICC 382** in the case of **Tapas Guha & Ors. vs. Angurbala Das** particularly in paragraphs 32 and 36 which runs as follows:

“32. Other decisions which were cited by Mr. Bachawat also held uniformly that the omission sought to be corrected which goes to the merit of the case, is beyond the scope of section 152 for which the proper remedy of the aggrieved party is to file an appeal or review application. It was, however, held therein that section 152 of the Code of Civil Procedure cannot be pressed into service to

correct an omission which is intentional, however, erroneous that may be.”

“36. Before concluding, this Court wants to put on record that a premises in any Municipal town and/or under a Corporation is normally identified by the holding number allotted to the premises and not by its boundary. Here is the case where there is no wrong description of the holding number of the premises wherein the tenancy is situated. The petitioners are also aware of the identity of the suit property and the extent of their tenancy in the said premises. The petitioners themselves identified the property and/or their tenancy in the said premises to the learned Advocate Commissioner at the time of holding local inspection in the said premises. They never disputed the correctness of the report submitted by the learned Commissioner. As such, they can neither be taken by surprise nor they can suffer any injury if the plaintiff’s prayer for amendment of the schedule of the plaint and/or for correction of the decree is allowed. On the contrary, if such correction is not allowed then the decree which was passed by the learned Trial Judge and was affirmed upto this Hon’ble Court in the second appeal, will be a decree on paper only and the decree holder will be deprived of enjoying the fruits of such litigation which continued for such a long time before different Courts at different stages.”

5. Having heard the learned counsel appearing on behalf of the petitioners as well as documents produced along with revisional application and also supplementary affidavit, I find that the plaintiffs obtained decree and that was affirmed by the First Appellate Court and also by the High Court, but decree could not be executed due to mistake in describing northern and southern boundary.

6. Learned counsel appearing on behalf of the

petitioners has drawn my attention to the observation of the Co-ordinate Bench of this Court in the case of **Tapas Guha & Ors. (supra)** and submitted that amendment petition has been filed on behalf of the petitioners only to make necessary correction of the northern and southern boundary of the subject property not the holding number.

7. After going through the observation of the Co-ordinate Bench as well as facts of this case, I find that amendment petition was filed on behalf of the plaintiffs only to change the boundary not the holding number and, therefore, identity of the land cannot be disputed. Moreover, if such correction is not allowed then the decree passed by the learned Trial Judge will only be a decree on paper whereby decree-holder will be deprived of enjoying the fruits of litigation which was passed by the learned Trial Court and affirmed upto High Court. Therefore, the prayer for amendment of the boundary of the subject property mentioned in the schedule to the plaint should be allowed to be amended.
8. Regard being had to the above, the order impugned stands set aside.
9. The amendment as sought for by the plaintiffs/petitioners herein stands allowed and they are directed to file amended plaint before the Trial Court within a period of two weeks from date.

10. Learned counsel appearing on behalf of the petitioners is at liberty to communicate this order to the learned Trial Court.
11. With the aforesaid observation, the revisional application stands disposed of.
12. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)