

30.4.2024
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Ct. no. 652
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**C.O. 1534 of 2021
with
CAN 1 of 2023**

**Kartick Chandra Das & Anr.
Vs.
Avijit Pandit**

Mr. Shyamal Kr. Chakraborty
Md. Mahmud
Mr. Asif Iqbal Baidya
Ms. Anjana Dasfor the Petitioners

Mr. Apurba Kr. Ghosh
Mr. Rudranil Ghosh ...for the Opposite
party

This application has been directed against impugned order dated 24th February, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court, Chinsurah. By the impugned order, learned court below allowed the plaintiff's prayer for amendment of the plaint.

The petitioner as plaintiff filed a suit for eviction of trespasser, recovery of possession, mesne profit and arrears of licence fee against the defendant/opposite party herein being Title suit no. 416 of 2018. In the said suit plaintiff contended that their father, Kanailal Das was allotted 13.20 decimals of land in plot no. 182 as homestead land by an indenture dated 20th July,

1984 and his name was also recorded in the Record of Rights. Thereafter, Kanailal Das gifted 10 decimals from said land to his son, Kartick Chandra Das, being petitioner no. 1 herein by deed no. 5301 of 2017 and 3 decimals of land to the other son, Ganesh Chandra Das by another deed bearing no. 5302 of 2017 and the name of Kartick Chandra Das was also recorded in the L.R. Record of Rights. Plaintiff's father case is licence granted to defendant has already been revoked and he was asked to quit and vacate the suit premises on the expiry of July, 2018 but defendant did not comply with the said notice. Hence the suit.

The defendant/opposite party herein contested aforesaid suit by filing written statement and in the written statement, the defendant has categorically stated in paragraph 11 that the father of the defendant purchased 5 sataks out of 13 sataks in the suit plot and has constructed suit rooms thereon and was in possession of the purchased property by letting it out to the different tenants. It is the further case of the defendant that their father executed a Will and said Will has been duly probated and as per said Will, mother of the defendant being owner and possessor of the suit properties has been

collecting rent from the tenants of the suit premises.

The petitioner's counsel submits that after going through the written statement, filed by defendant, plaintiff for the first time came to know that the father of the defendant purchased 5 sataks out of 13 sataks of land in the suit plot, but they have not mentioned when the said deed was executed nor they have mentioned when the father of the defendant executed Will in favour of his wife which has been allegedly probated. In such circumstances, for proper and effective adjudication of the suit, the proposed amendment is required to be allowed.

Mr. Apurba Kr. Ghosh, learned counsel for the opposite party raised strong objection contending that this is a suit for eviction of a premises tenant and if the prayer for amendment is allowed present suit for eviction will be converted into a suit for declaration and thereby the nature and character of the suit will be changed. He also submits that the court below was justified in rejecting the proposed amendment on the ground that if the proposed amendment is allowed, basic nature and character of the suit will be changed. He further contended that the deed was executed in favour

of the father of the defendant long back and as such, prayer sought to be incorporated by way of amendment, is also barred by law of limitation. Accordingly, he has prayed for dismissal of the present application.

I have considered the submissions made by the both the parties. On perusal of the plaint as well as the written statement, it appears that the real dispute between the parties in the present case is whether the status of the defendant is at present a trespasser after alleged revocation of licence or they have any right, title, interest in respect of alleged purchased portion in the suit property. It is true that plaintiff's original suit is for eviction of a trespasser and by way of amendment plaintiff sought to incorporate in the plaint a prayer for declaration of defendant's deed as void. It is also true that the amendment which changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must not be allowed but where however the amendment sought is only with respect to the relief in the plaint and is predicted on fact which are already pleaded in the plaint, ordinarily the amendment is required to be

allowed. (*Life Insurance Corporation of India -versus- Sanjeev Builders Private Limited & another*).

The Court below while rejecting the prayer for amendment have proceeded with an assumption that the proposed amendment if allowed will change the nature and character of the suit. I do not agree with the court below that the amendment sought for by the plaintiff, if allowed will introduce a different relief that what the plaintiff had asked for in the original plaint. Against plaintiff's prayer for eviction of trespasser, the defendant has set up right, title interest in the property, in his written statement which will be an issue to be decided in a trial. Moreover plaintiff's prayer for declaration of defendant's deed as void whether barred by time or not, could have been decided only after considering the evidence led by the parties. In the present context plaintiff by way of amendment sought to introduce additional relief whereby neither cause of action could change nor the relief could be materially affected.

Accordingly proposed amendment if allowed will hardly make a change in the nature of relief claimed, which court below erroneously held that it would change basic nature and character of the suit. Moreover if it is permissible for the plaintiff

to file separate suit for declaring defendant's Deed, if any, as null and void, subject to law of limitation, I fail to understand why such prayer cannot be incorporated in the pending proceeding, since dominant purpose of allowing the amendment is to minimize litigation.

Above all the real controversy test is the basic or cardinal test and since proposed amendment is necessary to decide the real dispute between the parties and as proposed amendment, if allowed will not cause injustice to the defendant, if the opportunity of filing additional written statement be given to defendant and the issue as the whether plaintiff's prayer is barred by limitation or not is kept open for final adjudication. As such the court below ought not to have rejected the prayer for amendment of plaint.

In such view of the matter, C.O. 1534 of 2021 is allowed. Pending application, if any, is also disposed of.

The plaint is amended as per schedule of the amendment application. The plaintiff is directed to file amended plaint before court below within a period of three weeks from the date of communication of the order and the defendant/opposite party will be at liberty to file

additional written statement, if any, within a period of three weeks thereafter. The Trial court will then frame issues on the basis of pleadings of the parties, including the issue of limitation and will make every endeavour for expeditious disposal of the suit.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)