

Item No.13
21.05.2024
Court. No. 19
GB

C.O. 1872 of 2023
With
C.O. 1869 of 2023

Sri Anup Kumar Sharma & Ors.
Vs.
Smt. Shanti Rani Roy & Ors.

Ms. Sohini Chakraborty,
Mr. Arijit Sarkar

...for the Petitioners.

Mr. Rwitendra Banerjee,
Ms. Soma Chakraborty,
Mr. Nikhil Gupta

...for the Opposite Parties.

1. C.O.1872 of 2023 and C.O.1869 of 2023 are taken up together on the consent of the parties as similar questions of law and fact are involved. The parties are also same.
2. In C.O.1869 of 2023 an order dated September 7, 2022, passed by the learned Civil Judge (Senior Division) at Purulia in Title Suit No.218 of 2020, is under challenge.
3. By the order impugned, the learned court rejected an application under Order 6 Rule 17 of the Code of Civil Procedure. The plaintiffs wanted to correct the schedule 1 and 2 of the plaint as also the injunction application in the following manner:-
 - a) R.S. Khatian No.3322 to be inserted in place of R.S. Khatian No.3522 and

- b) One storied building be inserted in place of two storied building.
4. By another application the petitioners wanted to incorporate subsequent events with regard to dispossession in respect of the suit property with an additional prayer for recovery of khas possession. The applications for amendment were rejected on the ground that on an earlier occasion, incorporation of the correct R.S. Khatian number had been rejected by the court. With regard to the incorporation of the alleged subsequent events of dispossession and prayer for recovery of khas possession, the learned court took into account the merits of the said amendment and decided the truth and veracity thereof. The learned court held that the allegations of dispossession were based on distortion of facts. Orders had been passed in WPA 4318 of 2020 dated October 15, 2020 and in MAT 708 of 2020 dated July 1, 2021 which indicated that Shanti Rani Roy and others were entitled to reside in the property in question.
5. Mrs. Chakraborty, learned advocate appearing on behalf of the plaintiffs/petitioners submits that the rejection of the first application for amendment by which R.S. Khatian number was sought to be corrected, has been challenged in C.O.1872 of 2023. This Court should interfere with the order impugned

in view of the fact that mere correction in the schedule could not be denied at the very initial stage of the suit.

6. It is also submitted that irrespective of the orders passed in the writ petition and the connected mandamus appeal, the fact that the plaintiffs lost their possession in respect of the property in question during the pendency of the suit, was required to be incorporated for proper adjudication of the dispute between the parties and the prayer for recovery of possession should also be allowed. The learned court could not have gone into the merits of the amendment.
7. Mr. Banerjee, learned advocate appearing on behalf of the opposite parties submits that as the dispossession was in terms of the order of the writ court and the plaintiffs were also unsuccessful in the appeal, the learned judge had rightly rejected the said application. Mr. Banerjee further submits that filing of successive applications for correction of the khatian numbers was also improper. Thus, the court did not act beyond jurisdiction in rejecting the applications for amendment.
8. Heard the learned advocates for the respective parties. Admittedly, three applications for amendment of the plaint were filed. First application was filed for correction of the schedule to incorporate the proper R.S. Khatian number and the description of the

building as one storied instead of two. The other application was filed for incorporation of events which led to dispossession with further prayer for recovery of khas possession.

9. The law is well-settled. Amendment of the plaint should be allowed liberally, except when the amendment sought to be incorporated was *ex facie* barred by limitation or where the plaintiffs wanted to incorporate contrary pleas. The merits of the amendment was not to be looked into by the learned court. Whether the contentions of the plaintiffs were correct or not would be a matter of evidence. At the very nascent stage, the petitioners prayed for correction of the schedule in the application for injunction as also in the plaint. In my opinion, such correction was formal in nature and did not change the nature and character of the suit. It also did not take away any vested right which may have accrued in favour of the defendants.

10. Under such circumstances, amendment of the schedule is allowed both in the plaint and in the injunction application. With regard to the amendment for incorporation of paragraph 24(a) and an additional prayer, this Court is of the view that subsequent dispossession and facts relating to such dispossession, have been sought to be incorporated. The plaintiffs will have to prove the truth and veracity

of such statements in the trial. Whether the prayer for recovery of possession should be allowed or not, would also to be decided at the trial. The learned judge, while discussing the scope of an amendment application, had gone beyond the pleadings to decide whether such prayer and additional pleadings were available to the petitioners or not. The orders passed in the writ petition as also in the appeal therefrom were taken into consideration. This was not the correct procedure. The contention of Mr. Banerjee that the dispossession took place upon implementation of the orders of the High Court shall be decided in the suit. The learned court shall proceed with the hearing of the suit on the evidence to be led by the parties.

11. At this stage, the Court was only required to see whether the amendment was necessary for proper adjudication of the dispute between the parties or whether the amendment should be allowed in order to prevent multiplicity of proceedings.
12. In my view, the amendment should be allowed in order to avoid multiplicity of proceedings and to decide all issue and disputes between the parties which have surfaced during the continuation of the suit and also in several other proceedings. The amendment of the plaint by incorporation of the additional prayer and paragraph 24(a) is also allowed.

A composite plaint shall be filed incorporating all the amendments within three weeks after reopening of the court after the summer vacation. An amended injunction application allowing the correction of the schedule shall also be filed with copies to the opposite parties. The opposite parties shall be entitled to file their additional written objection to the amended injunction application and also an additional written statement to the amended plaint.

13. Accordingly, the revisional applications are disposed of.

14. This Court has not gone into the merits of the issues involved. The observations made in these revisional applications are restricted to the adjudication of the propriety of the orders impugned before this Court and the learned court shall proceed independently with the hearing of the injunction application. With regard to the court fees to be paid, if the learned court is of the view that the additional court fees would be required to be paid in view of the additional prayer, necessary orders shall be passed.

15. However, there will be no order as to costs.

16. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)