

Item No. 4
26.02.2024
Court. No. 19
GB

C.O. 2852 of 2022
With
CAN 2 of 2024

Sikha Mahato
Vs.
Pranabesh Mahata & Ors.

*Mr. Shyamal Kumar Pandey,
Mr. Somnath Gangopadhyay*

...for the Petitioner.

*Mr. Tanmoy Mukherjee,
Ms. Debjani Sengupta,
Ms. Paulomi Ghosh*

...for the Opposite Party No.1.

1. The revisional application arises out of an order dated July 12, 2022, passed by the learned Civil Judge (Junior Division), 1st Court at Khatra, Bankura in Title Suit No.97 of 2006.
2. By the order impugned, the learned court allowed the plaintiff to file a supplementary affidavit-in-chief after closure of evidence. According to the learned court, the supplementary affidavit-in-chief should be allowed to be filed. Upon detection of some mistakes in the earlier affidavit-in-chief, the mistake was sought to be rectified. The court observed that the mistake was a bona fide one as the learned advocate who was representing the plaintiff, had mistakenly filed the affidavit-in-chief incorporating statements relating to another suit filed by the same plaintiff against another occupier of the premises, instead of basing the affidavit-in-chief on the plaint case itself.

3. The learned court was of the further view that the defendant would not suffer any injury as the opportunity of cross-examination always remained. Accordingly, the application under Section 151 of the Code of Civil Procedure was allowed upon payment of cost of Rs.500/-.
4. Having perused the plaint case, it appears that the suit was filed by the defendant/opposite party no.1 being the grandson of the original owner of the premises, against Smt. Sikha Mahato, the petitioner herein, for declaration and recovery of khas possession. Smt. Sikha Mahato is the daughter-in-law of the original owner and the aunt of the plaintiff. The opposite party no.1 claims his right, title and interest in respect of the property in question on the basis of a deed of gift executed by the original owner in favour of the opposite party no.1. He seeks declaration of his ownership and eviction of the petitioner, upon revocation of licence.
5. Affidavit-in-chief was filed by the P.W.1 and the evidence proceeded on the basis thereof. After closure of evidence it was detected by the P.W.1 that the affidavit-in-chief narrating the facts of another suit had been mistakenly filed in the present suit and such mistake was committed by the learned advocate who had been engaged by the plaintiff. Thus, the supplementary affidavit-in-chief was filed.
6. The defendant/petitioner objected to such supplementary affidavit-in-chief, inter alia, stating that the supplementary affidavit-in-chief could not be filed after

the evidence was closed. The plaintiff wanted to bring a new set of facts on records, which was not permissible.

7. Admittedly, the suit was filed for declaration of title and recovery of khas possession, upon evicting the defendant/petitioner. The defendant/petitioner has been sought to be evicted from the property on the ground that she was a mere licensee in respect of the property.
8. According to the plaintiff, the ownership devolved upon him on the basis of a deed of gift. According to the defendant, no title had passed on the basis of the deed of gift as the same was executed under coercion. Fraud had been played on the original owner.
9. On the basis of the said plaint case, the supplementary affidavit-in-chief had been filed as the earlier affidavit-in-chief admittedly recorded facts relating to another case. The mistake, according to the plaintiff, was on the ground that a similar suit for eviction was pending against another occupier and the learned advocate by mistake had incorporated the statements of another suit while preparing the affidavit-in-chief in the present suit.
10. The learned advocate for the petitioner/defendant has assailed the order of the learned trial court on the ground that after closure of evidence, allowing such separate set of facts to be brought in by a supplementary affidavit-in-chief, was beyond the scope of the Code of Civil Procedure.
11. However, the learned advocate could not point out any statement in the supplementary affidavit-in-chief which

was contrary to the plaint case or in deviation therefrom. Rather, the supplementary affidavit-in-chief was based on the plaint case itself. Thus, in exercise of power under Section 151 of the Code of Civil Procedure, the learned court had allowed such affidavit-in-chief to be filed so that the plaint case could be proved. The mistake was bona fide and the exceptional situation warranted interference by the learned court to enable the plaintiff to lay the foundation of his plaint case, otherwise the suit would fail on a mistake committed by the learned advocate during the preparation of the affidavit-in-chief. This order was rightly passed, for the ends of justice.

12. In any event, the defendant will not suffer any injustice if such supplementary affidavit-in-chief is filed as per the plaint case. The defendant shall have the opportunity to cross-examine the plaintiff. Moreover, the probative value of the evidence will be decided at the trial. The statements are rebuttable by the defendant. However, the earlier affidavit-in-chief shall not be looked into. The parties shall recall themselves and adduce evidence in accordance with law and the learned court shall dispose of the suit expeditiously, preferably within a period of six months from date of communication of this order.
13. However, as evidence was closed and the mistake was detected much later, the defendant ought to be compensated with cost and, in my opinion, further cost of Rs.20,000/- shall be paid to the defendant within a period of two weeks from the date of communication of

this order and the plaintiff will be allowed to depose on the basis of the supplementary affidavit-in-chief, only upon the court being satisfied that the cost as directed by this Court, has been paid.

14. Accordingly, the revisional application is disposed of.
15. With the disposal of the revisional application, CAN 2 of 2024 is disposed of accordingly.
16. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)