

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.O. No. 2834 of 2013

Sri Bijoy Krishna Pal

-Versus-

Sri Mohan Chatterjee & Ors.

For the Petitioner : **Mr. Rahul Karmakar.**

For the Opposite Parties :

Hearing concluded on : **12.04.2024**

Judgment On : **22.04.2024**

Prasenjit Biswas, J:-

1. This civil revision is directed against the order dated May 16, 2013 passed by the learned Civil Judge (Junior Division), Additional Court at Bankura in connection with Title Suit No. 4 of 2012.

2. By passing the impugned order learned Trial Court allowed the application in part filed by the plaintiffs with a prayer for amendment of the plaint. Being aggrieved and dissatisfied with the said impugned order one of the plaintiffs filed this instant application under Article 227 of the Constitution of India.

3. The petitioner along with proforma opposite party had instituted a suit against the defendants with a prayer for declaration of title and for injunction in respect of the scheduled property as mentioned in the plaint. The defendants entered into that suit and contested the same by filing written statement denying and disputing all the materials allegations as stated in the plaint. In that suit an Advocate Commissioner was appointed to hold local investigation in respect of the suit property and after conducting the local investigation the Advocate Commissioner submitted a report before the Trial Court. Thereafter this petitioner along with the proforma opposite party had filed an application with a prayer for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure before the Trial Court by which they intended to insert the prayers of mandatory injunction and recovery of possession in respect of a 'bedi' situated on the scheduled property in the prayer portion of the plaint. Another prayer was also made by the plaintiffs with a prayer for relinquishing the claim over a 'Koop' (well) as predecessors of the plaintiff have already gave it in favour of the Bankura Municipality and by filing the amendment application the plaintiffs prayed for deleting the said prayer portion from the plaint.

4. Despite service affected upon the opposite party they did not venture to appear and contest the present revisional application.

5. Let the affidavit of service filed by the petitioner be kept with the record.

6. It is submitted by the learned Counsel on behalf of the petitioner that the learned Trial Court failed to exercise its jurisdiction in applying the settled tests as provided under Order 6 Rule 17 of CPC and committed error in allowing the application for amendment in part. It is further submitted by the learned Counsel that the proposed amendment as prayed for shall not change the nature and character of the suit. Learned Trial Court erred in law by holding that the opposite parties shall be prejudiced if the amendment application filed by the plaintiffs is allowed. The attention of this Court is drawn by the learned Counsel appearing on behalf of the petitioner in respect of a decision rendered by the Hon'ble Apex Court in case of **Akkamma And Others vs. Vemavathi And Others** reported in **(2021) 18 Supreme Court Cases 371**.

7. The amendment application was filed by the plaintiffs intending to insert the prayer for mandatory injunction and recovery of possession of a bedi situated on the scheduled property and with a prayer for relinquishing the 'Koop' (well). It is stated by the petitioner that the said bedi was made during the pendency of this suit and as such prayer for mandatory injunction and recovery of possession is required to be inserted in the prayer portion of the plaint otherwise they will be prejudiced but in respect of the 'Koop' (well) it is stated by the petitioner that their predecessor-in-interests have already

given it in favour of the Bankura Municipality and as such the prayer made in respect of the claim of the said 'Koop' (well) is required to be deleted.

8. Learned Trial Court after giving opportunity of being heard to both the sides allowed the prayer of deleting the claim in respect of the 'Koop' (well) situated over the scheduled property but in respect of the inserting the prayer of mandatory injunction and recovery of possession in respect of bedi situated on the scheduled property it has been rejected by passing the impugned order. Learned Trial Court held that evidence taking process has already been started and P.W 1 during his cross-examination admitted that the said bedi is not in their possession and the same is being used by the public and common people. The learned Trial Court also held that the said bedi was constructed in the year 1332 B.S as per report submitted by the Advocate Commissioner and since no objection was raised by the plaintiffs, they could not at this stage make such type of prayer for mandatory injunction and recovery of possession in respect of the said bedi situated on the scheduled property. The learned Trial Court disbelieved the said prayer of the plaintiffs by which they intended to insert the prayer for mandatory injunction and recovery of possession of the 'bedi' by filing the amendment application. Virtually, the learned Trial Court went deep into facts of the case and rejected the said prayer for amendment by passing the order impugned.

9. The short important question that arises for consideration in the present revision application is with regard to the power of the Court to allow an application for amendment under Order VI Rule 17 of C.P.C. The scope of

Order VI Rule 17 of C.P.C and the manner in which the Courts ought to consider applications for amendment is quite well settled by a long line of decisions by the Hon'ble Supreme Court.

10. The Apex Court in **Baldev Singh and Others Vs. Manohar Singh and Another** reported in **(2006) 6 Supreme Court Cases 498** wherein it was held at paragraph 8 as under:

“It is well settled by various decisions of this Court as well as the High Courts in India that courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung [(1920-21) 48 IA 214 : AIR 1922 PC 249] in which the Privy Council observed: (IA pp. 216-17)

“All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.”

11. It is profitable to quote the observation of the Hon'ble Apex Court in case of **Usha Balashaheb Swami v. Kiran Appaso Swami, (2007) 5 SCC 602**. In this case it was further held by the Apex Court at paragraph 17 interalia that-

“From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. However, proviso to Order 6 Rule 17 of the Code would not be applicable in the present case, as the trial of the suit has not yet commenced.”

12. In ***Rajesh Kumar Aggarwal v. K.K. Modi*, (2006) 4 SCC 385** the Hon’ble Apex Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. In this case it is held by the Apex Court at paragraphs 18 and 19 as under:

18. *As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the*

High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

19. *While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case. In my opinion, under such circumstances when specific pleadings are there in the plaint, the relief of partition and possession not claimed, can be claimed by the plaintiff/respondent No.1 by making amendment in the prayer clause and allowing the amendment does not change the nature of suit because the existing facts have not been disturbed and no new fact was inserted. The relief of possession is a consequential relief and as per the existing pleadings, the same*

should have been claimed, but not claimed under some misconception and if suit is allowed and decreed in favour of the plaintiff and possession is not claimed, the plaintiff would be required to file another suit claiming possession and as such, the basic object of amendment to avoid multiplicity of suit would have been defeated if application would have been rejected.”

13. Without discussing the law laid down by the Apex Court the amendment should be allowed liberally, unless there appears an apparent mischief. The inherent and dominant purpose of allowing an amendment is to minimize litigation even if there is any plea that the relief sought by way of amendment was directed by time as arguable in the circumstances of the case when the amendment is incorporated. Such a plea also cannot be thrown away summarily without affording an opportunity of being heard into the law on the point under the facts and circumstances of the particular case.

14. In my considered opinion, by allowing the amendment application by including prayers of mandatory injunction and relief of recovery of possession, it does not mean that the suit is decreed as prayed for. The plaintiff/ revision petitioner will have to establish his case before the trial court by adducing oral and documentary evidence in support of his case. While allowing the amendment application the merit of the suit is not going to be decided. Further, after allowing amendment application, the defendants are entitled to file additional written statement by denying averments made by the plaintiff.

By allowing the same multiplicity of proceeding could be avoided and the parties need not spend their time and money for litigation.

15. The proviso appended with the respective provision provides that the application for amendment shall not be allowed after commencement of trial unless the Court is satisfied that instead of due diligence party could not have raised the matter before commencement of trial, but in number of cases it is observed and held even by the Supreme Court that said proviso is not conclusive, mandatory and puts specific bar for allowing the application after commencement of trial whereas the Court has observed that it is directory and if the Court is satisfied that the amendment is necessary for proper adjudication of the case and also to resolve the dispute between the parties, the same can be allowed.

16. The Supreme Court in case of **M.C. Agrawal HUF vs M/s. Sahara India and Ors** reported in **AIR 2008 Supreme Court 2887** has observed as under:-

4. Having heard the learned counsel for the parties and after going through the plaint as well as the application for amendment of the plaint and the objections filed by the respondent, we do not find any ground to refuse the prayer of the appellant to amend the plaint in the manner they have prayed for. While rejecting the application for amendment of the plaint, it was held by the High Court that the amendment was not necessary nor germane to the controversy between the parties for the reason that claim for mesne profits/damages had to be dehors the contract between the parties. It

was further observed that measure of mesne profits/damages would be the rental fetched by similar situated properties in the vicinity over the period mesne profits was being claimed. Upon, these observations, the prayer for amendment of the plaint was rejected. In our view, the amendment of the plaint sought for by the plaintiff/appellant was necessary in deciding the real controversy between the parties. It is always open by way of an amendment to amalgamate the two reliefs in one suit. That apart, at the time of allowing or refusing to amend the plaint, it is not open for the Court to decide the merits of the suit which can only be gone into and decided by it at the time of decision of the suit. The plaintiff/appellant is entitled to plead and prove the amount of rent and the equivalent amount of benefit received out of the letting out of the property to show the contractual rent of use and occupation charges. On the basis of the lease agreement, it is clear that the mesne profit/ damages cannot be awarded less than the contractual rate of use and occupation charges. Therefore, in the event of allowing the amendment of the plaint in the aforesaid circumstances, the nature of the suit shall not be changed. Therefore, in our view, there was no reason as to why the prayer for amendment of the plaint should not be allowed. In our view also, the prayer for amendment of the plaint was necessary in order to adjudicate the real controversies between the parties, i.e. with respect to the quantum of the mesne profits/damages. (emphasis supplied)

17. The provision of Order VI Rule 17 of CPC can be divided into two parts. The first part is discretionary (“may”) and gives wide and unfettered discretion to decide on case to case basis whenever it appears to be just. The court may or may not allow the amendment to the proceeding for determining the real questions of controversy. The approach of the Court should be liberal and not hypothetical. Hence, the amendment to proceedings is not a right; rather it is in the discretion of the court. The second part is mandatory (“Shall”) and orders the court to accept all the applications necessary for the purpose of determining the real issue between the parties if it finds that the parties could not have raised the issue in spite of the due diligence before the commencement of the trial. However, such discretion must be exercised by applying the judicial mind according to the well-established principles.

18. Moreover, it should be kept in mind that the Trial Courts which are the Courts of first instance must adopt a balanced approach in dealing with the applications and there has to be well considered reasoning behind the decision in these aspects. It has to be pointed out that in cases where the amendment of the plaint is necessary and the same is not allowed, it could virtually defeat the very purpose of filing the suit itself.

19. Recently Hon’ble Apex Court in case of **Varun Pahwa Vs. Renu Chaudhary** reported in **(2019) 15 SCC 628** observed that the amendments in the pleading cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Hon’ble Apex Court held in that case that even if a party is negligent or careless as the

power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitation. The Hon'ble Apex Court virtually allowed the amendment of the pleadings and observed that the Court should avoid hyper technical approach in disposing the application praying for amendment of the pleading.

20. In view of the foregoing reason, I am of the considered opinion that the proposed amendment application filed by the plaintiff is to be allowed intending to insert the prayer of Mandatory Injunction and recovery of possession of 'bedi' as situated on the scheduled property. .

21. In the result:

(a) This Civil Revision Petition is allowed and order dated May 16, 2013 passed by the learned Trial Court in connection with Title Suit No. 4 of 2012 is hereby set aside to the extent of amendment as 'bhairab bedi' is concerned.

(b) The prayer for inserting Mandatory Injunction and recovery of possession in the prayer portion of the plaint by the plaintiff in filing the amendment application is hereby allowed.

(c) The trial court is directed to permit the revision petitioner to carry out the amendment and file amended plaint;

(d) The defendant is permitted to file an additional written statement if any, within 30 days from the date of filing of the amended plaint.

(e) Plaintiffs shall be given opportunity to adduce evidence upon the amended portion of the plaint. Liberty shall also be given to the defendants to cross examine the plaintiffs' witness.

22. The trial court is directed to dispose of the suit preferably within a period of six months from the date of receipt of a copy of this order without giving unnecessary adjournments to either of the side.

23. No cost.

24. Consequently, connected miscellaneous petition if any is closed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)