

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL REVISIONAL JURISDICTION)**

PRESENT:

THE HON'BLE AJOY KUMAR MUKHERJEE

**C.O.50 of 2024
With
CAN 2 of 2024**

Subir Bhattacharya

Vs.

Sevoke Commosales LLP & Another.

For the Petitioner : Mr. Sourabh Guhathakurata
Mr. Debjit Kundu
Mr. Sukanta Sarkar

For the Opposite Party no 1 : Dr. Pabitra Paul Chowdhury
Mr. Debarshi Dhar

Heard on : 16.08.2024

Judgment on : 03.09.2024

Ajoy Kumar Mukherjee , J.:

1. Being aggrieved by an order dated 23rd February 2024 passed by learned Civil Judge (Junior Division) Jalpaiguri in Title Suit no. 102 of 2022, present application under Article 227 of the Constitution of India has been preferred. By the order impugned, learned court below has allowed

plaintiff's application for amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure with cost of Rs.1000/-.

2. Petitioner herein contended that opposite party no. 1 as plaintiff filed aforesaid Title Suit no. 102 of 2022 *inter alia* with a prayer for confirmation of title, possession, declaration, injunction and consequential reliefs. Plaintiff purchased property in question by virtue of a registered deed and plaintiff's further case is since purchase plaintiff was in possession of the schedule mentioned suit property which is butted and bounded by boundary wall form all sides, along with gate. Plaintiff's further case is that his name has been recorded in the L.R Records of Rights

3. During pendency of the said suit plaintiff filed an application for amendment wherein he has stated that after disposal of Revisional Application being no. C.O. 68 of 2023, the defendants, during puja vacation on 10.11.2023 with the help of local antisocial elements, and after braking open the padlock of the main entrance gate, put their padlock thereon and thereby they took forcible possession and control of the suit land, deliberately violating the order of status quo dated 19.04.2022. Plaintiff also prayed for incorporation of consequential reliefs in terms of alleged dispossession. The petitioner/defendant filed written objection against said prayer for amendment of plaint made by the plaintiff, contending that plaintiff was never in possession of the property and it is all along under defendant's possession.

4. However learned court below upon hearing learned counsel appearing on behalf of the parties and relying upon a judgment of this Court reported in **(2023) 4 ICC 543**, came to a finding that proposed

amendment involving question of encroachment and recovery of possession, unless incorporated by way of amendment, the real controversies between the parties could not be adjudicated effectively and conclusively. He further observed that the proposed amendment if allowed will not change nature of the suit and on the contrary for proper adjudication of suit, proposed amendment is necessary, without going into the correctness or falsely of the case made out in the amendment application.

5. Being aggrieved by the said order Mr. Guhathakurata on behalf of the petitioner submits that opposite party no. 1 herein/plaintiff has admitted in paragraph 25 and 26 of the plaint that he is not in possession of the suit property. Moreover opposite party no. 1 has not stated or produced any document in order to prove his possession over the suit property. In this context he also referred Order VII Rule 14 of the Code and contended that the plaintiff is required to produce the documents at the time of presentation of the plaint but in the present case the opposite party no. 1/ plaintiff has not produced any document in support of possession over the suit property.

6. He further submits that opposite party no. 1 /plaintiff filed an application for investigation commission but the commissioner in his report mentioned that the plaintiff failed to identify his land. However court below rejected commissioner's report and said rejection order was challenged before this Court in C.O 68 of 2023 and this Court was pleased to set aside the appointment of pleader commissioner. Thereafter when the opposite party no. 1 failed to prove his possession and also failed to identify his

alleged purchased land, he has come up with the said application for amendment with *malafide* intention and oblique motive with alleged story of their dispossession from the suit property and also for recovery of possession. If such prayer is allowed it will not only change character of the present suit but also will introduce a new case. In this context he relied upon judgment of the Apex court in

- (a) ***Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Vsman Habib Dhuka and others*** reported in **(2013) 9 SCC 485**
- (b) ***Nazir Mohamed Vs. J. Kamala & Others*** reported in **(2020) 19 SCC 57.**
- (c) ***Revajeetu Builders and developers Vs. Narayana Swamy and Sons and others*** reported in **(2009) 10 SCC 84**
- (d) ***Gaesh Prasad Vs. Rajeshwar Prasad and others*** reported in **(2023) SCC OnLine SC 256**
- (e) ***Basavaraj Vs. Indira and others*** reported in **(2024) 3 SCC 705**

7. Mr. Chowdhury learned counsel appearing on behalf of the opposite party submits that the present application has been filed by the petitioner/defendant no. 1 suppressing materials facts and in this context he relied upon ***Nand Lal Vs. State of Jammu & Kashmir, AIR 1960 J&K page 19*** and **(2013) 9 SCC 99**. He further submits that Trial Court granted injunction directing both the parties to maintain status-quo with regard to the nature character and possession of the suit property as on the day till disposal of the suit vide order dated 19.04.2022. It is further submitted that plaintiff showing his good gesture has sought for the local inspection of the suit land but the petitioner herein has not annexed copy of

application with a sketch plan not to bring about the contradictions on the point raised for inspection and the points dealt by the commissioner, in hand and gloves with the petitioner/defendant. However plaintiff prayed for appointment of survey knowing commissioner to identify the land in dispute and the same has been accepted by the learned court below after hearing both side on 20.06.2023.

8. Taking advantage of vacation period of court, the petitioner/defendant took forceful possession of the suit land and for which amendment is very much required in order to bring subsequent factual matrix for adjudication of the suit and the court below by a reasoned order had allowed the application for amendment of plaint. Since such order allowing amendment does not suffer from any illegality or perversity, so it does not call for interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

9. I have considered submissions made by both the parties.

10. On perusal of paragraph 25 and 26 of the paint its appear that plaintiff has alleged that on 08.12.2021 when he had gone to suit property he found that some unknown person had broken the lock of the gate and stored some sand in the suit land in order to take illegal and wrong full possession of the suit land and he further stated in para 26 that he lodged written complaint in the local police station. On 09.12.2021 he found that front portion of boundary wall of the suit land was damaged and for which he also lodged diary in the police station on 10.12.2021. Now by way of proposed amendment plaintiff wants to incorporate that on 10.11.2023 the defendants with the help of some other persons after breaking open the

padlock of the main entrance gate put there padlock therein and thereby they took forcibly possession and control of the suit land violating order of injunction passed by court on 19.04.2022.

11. Accordingly from the above quoted portion of pleading it clearly reveals that in the original plaint plaintiff has tried to make out a case that a process of dispossession was initiated by the defendants on two specific dates and for which complaint was lodged and ultimately he was disposed on 10.11.2023. Trial court rightly held that at the stage of considering amendment petition the truthfulness or falsity of said statement which plaintiff once to incorporate by way of amendment is not required to be adjudicated as it can only be decided at the end of trial. Fact remains that when plaintiff has raised an issue of dispossession in the plaint as well as in the proposed amendment application, such issue as to whether plaintiff was all along in possession before alleged dispossession or plaintiff was never in possession of the suit property needs to be adjudicated in the present context and it can only be done by way of fair trial.

12. As held by a co-ordinate bench of this court in ***Smt. Sarala Mahato and others vs. Smt. Anguri Mahato and other***, reported in **2022 (4) ICC 912 (Cal)**, the story of dispossession followed by insertion of a prayer for recovery of possession is always subject to proof but it has a strong nexus with the denial of dispossession disclosed by the defendant in their defence. Since one of the main issue involved in the present context revolves to the claim of dispossession of the plaintiffs versus claim of continuous possession by the defendant in the suit land, the proposed amendment unless incorporated in the plaint, it is hardly possible for the

court to adjudicate real controversy between the parties conclusively. Moreover since from the original pleadings it appears that the allegation and counter allegation about possession and dispossession is the core issue of the matter and as such if the proposed amendment is allowed, it will not change nature or character of the suit, since even after proposed amendment, the suit will remain a suit for adjudication of the issue as to whether defendant were all along in possession of the property in question or defendant had taken forcible possession of the suit property by evicting plaintiff therefrom.

13. It is settled position of law that while adjudicating an application preferred under Article 227 of the Constitution of the India, the High court is not supposed to interfere with the order impugned, unless it has resulted in any gross and manifest failure of justice or suffers from illegality or perversity. When the Trial Court made specific observation in the order impugned that proposed amendment involving question of encroachment and recovery of possession unless incorporated by way of amendment, the real controversy between the parties will not be adjudicated effectively and conclusively and such amendment is necessary for proper adjudication of the suit, I find no material for holding that there is any impropriety in the order impugned which calls for interference by this Court.

14. It is also well settled that while exercising supervisory jurisdiction, such power of the court cannot be taken as right of another appeal to the aggrieved party nor can this power be invoked to point out an error of law or fact in the order of court below and High Court would not be justified in interfering with the order of Trial Court in exercising supervisory

jurisdiction on the only ground that a different view on facts elicited was possible. Such approach does not permit interference in exercise of jurisdiction under Article 227 of the Constitution of India.

15. In view of aforesaid discussion I do not find that the findings of the court below while allowing the prayer for amendment of plaint suffers from any illegality or perversity or gross failure of justice and for which I am not inclined to interfere the order impugned.

16. In such view of the matter **C.O. 50 of 2024** is dismissed. Connected application, if any, is also disposed of accordingly.

17. However this order will not precluded defendant from filing additional written statement on filing amended plaint by the plaintiff and I also make it clear that I have not dealt with allegation and counter allegation about possession of suit property, which can only be adjudicated by court at the conclusion of Trial.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)