

I. A. No. GA 1 of 2023
APOT No. 377 of 2023
with
CS No. 219 of 2012
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Kangali Charan Raul & Anr.

Versus

Thakurani Shree Shree Durga Mata Jew & Ors.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 31st January 2024

Appearance:

Mr. S. N. Arefin , Advocate

Mr. Partha Chakraborty, Advocate

Mr. Muhammad Ubaid, Advocate

for the appellant

Mr. Debdatta Sen, Advocate

Ms. Suchismita Ghosh Chatterjee, Advocate

Ms. Ledia Dasgupta, Advocate

for the respondent

The Court: Order in terms of prayer (a) of the stay petition.

We formally admit the appeal.

As the point involved in this appeal is very short we are in a position to dispose of it, dispensing with all formalities.

The impugned judgment and order is dated 22nd August 2023.

In the application made by the respondents/plaintiffs before the learned single judge two reliefs were sought. The first was amendment of paragraphs 1, 2, 4, 8, prayer (a) and schedule (A) and the concise statement of the plaint to clarify and make a more elaborate description of the subject property. The second relief was for recording the death of the plaintiff no.4 and for substitution of his legal heirs or representatives.

There is no dispute with regard to the revised description of the suit property. Neither is there any dispute with regard to the death of the plaintiff no.4 and his legal heirs.

However, by the impugned judgment and order dated 22nd August 2023 the learned judge has allowed the amendments in the plaint sought but the substitution part has been rejected.

Aggrieved, the defendants have preferred this appeal.

The reason advanced in support of the judgment is that amendment of the plaint is provided in Order VI Rule 17 of the Civil Procedure Code. Only amendments were sought by the respondents/plaintiffs in the application. Substitution was something different. It had to be pleaded and asked for separately. Since it was not done in that way, the application for substitution was rejected.

Although the respondents/plaintiffs have not preferred any cross-objection, we are unable to appreciate this kind of a technical view of the matter.

An amendment of the plaint is nothing but a change in its structure. When we alter the description of the property it results in change in the body of the plaint. When we record the death of a party the change is both in the cause title and in the body of the plaint. Both are amendments but different in terminology in different provisions of the Civil Procedure Code.

We are of the view that the application was in perfect order and ought to have been allowed.

In those circumstances, we not only uphold the judgment and order dated 22nd August 2023 but also, exercising our power under Order XLI Rule 33 of the Civil Procedure Code, add thereto an order allowing the prayer of the respondents/plaintiffs to record the death of the plaintiff no.4 and to substitute his legal heirs by suitably

amending the cause title and body of the plaint and all other records of the proceedings where such amendment/substitution is necessary.

The appeal (APOT 377 of 2023) and the connected stay application (IA No. GA 1 of 2023) are disposed of accordingly.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose