

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 803 of 2023

Jai Ram Singh

VERSUS

Nandlal Singh & Ors.

For the petitioner:

Mr. Amitava Pain, Adv.
Mr. P.P. Mukhopadhyay, Adv.

For the O.P. No.2.

Mr. Chittapriya Ghosh, Adv.
Ms. A. Gupta, Adv.

Last Heard on: December 10, 2024

Judgment on: January 03, 2025

Biswaroop Chowdhury, J:

The petitioner before this court is a plaintiff in a suit for partition and is aggrieved by the order dated 24-02-2023 passed by Learned Civil Judge (Senior Division) at Serampore Hooghly in Title Suit No 176 of 2021, in rejecting the prayer of the petitioner/ plaintiff for amendment.

The case of the petitioner before Trial Court in the petition for amendment may be summed up thus:

1. The plaintiff/petitioner filed the suit for partition against the defendants/ opposite parties.
2. Although in the plaint it is mentioned that the property originally belonged to Randhir Singh who obtained the same by way of mutual family partition and on the strength of the said mutual family partition and on the strength of the said mutual family partition became the sole and absolute owner of the property and on the demise of Randhir Singh his sons and married daughter became the joint owner of the property as 1/9 share of each.
3. The father of Randhir Singh namely Hari Kishun Singh who was the original owner of the suit and other properties during life time made and executed family settlement on 20/03/1979 by enclosing the plan with the said family settlement and by the said family settlement as well as mutual family partition said Randhir Singh became the absolute owner of the property situated at 8 No Jodhan Singh Road Rishra Hooghly since obtained the aforesaid property by exercising right title and ownership by paying municipal taxes in his name to the Competent authority of Rishra Municipality got the Building plan sanctioned in respect of the property. Upon obtaining sanctioned plan the said Randhir Singh constructed the structure over the property as per building plan.
4. After demise of Randhir Singh his sons and daughter inherited the property situated at 8 No Jodhan Singh Road Rishra Hooghly.

5. It is also a relevant fact that after giving respect towards the amicable family settlement executed by Hari Kishun Singh and family partition executed by and between the heirs of Hari Kishun Singh before the Municipal Authority the heirs of Hari Kishun Singh mutated their names those who were allotted separate holding No as 8 No Jodhan Singh Road- Randhir Singh 51/2 Gandhi Sarat, Om Prakash 51 Gandhi Sarat, Sachidananda Singh and holding No 8 Jodhan Singh road which is allotted in favour of Randhir Singh exclusively.
6. On the demise of Randhir Singh namely Jai Prakash Singh who is now posted as Additional District Judge at Malda chanchol in collusion with the local municipality without partition and without consent of other co-sharer sub-divided the holding no 8 Jodhan Singh road as municipal holding no 8/4 Jodhan Singh road Sri Lalan Singh, municipal holding no 8/11, Jodhan Singh road Sri Dipak Narayan Singh Municipal holding no 8/2 Jodhan Singh road- Sri Jairam Singh and municipal holding no- 8/3 Jodhan Singh road Sri Surya Deo Singh in the municipal assessment record only but there is no physical partition at all.

The defendants/ opposite parties filed written objection to the petition for amendment filed by petitioner/ plaintiff

Learned Trial court by order dated 24/02/2023 was pleased to dispose the petition for amendment by observing and directing as follows:

‘Perused the case record and materials on it, wherefrom it appears to me that plaintiff by this proposed amendment petition is intending to incorporate the genesis of devolution of the property by the father of parties to the suit.

It also appears to me that plaintiff by this proposed amendment petition is also intending to incorporate the allegation to the effect that the pro defendant managed to mutate the holding number in their favour.

Considering the submission of Ld. Lawyer of the parties, the suit in course of hearing, I have perused the case record and materials on it, wherefrom it appears to me that plaintiff by this proposed amendment petition is intending to incorporate the source of devolution of property by way of partition by the father of plaintiffs and the defendants. The said fact of partition/amicable settlement has already been stated by the plaintiff in para 2 of the plaint. The amendment sought for is nothing but the elaboration of the devolution of the property but the date varies with the date as mentioned by the plaintiff in original plaint. It is the case of the plaintiff that their father had acquired the suit property by virtue of family settlement mutually family partition on 30.06.2001 but by the proposed amendment petition he is intending to incorporate family settlement dated 20.03.1979 instead of 30.06.2001. There is disparity with the date as stated by him with the date of family settlement he is intending to incorporate in the plaint.

Secondly it also appears to me that plaintiff by this proposed amendment petition is intending to incorporate the allegation but allegation my opinion not necessary to adjudicate the matter in issue as the instant suit as

filed by the plaintiff is for partition of the suit property. The allegation as incorporated in the pleadings is not at all necessary for the parties to adjudicate the matter in dispute, Moreover no reasons has been assigned by the plaintiff for not incorporating the said facts at the time of filing the suit. so, I do not find any justification to allow the prayer of plaintiff. Hence, the prayer is considered and rejected.

Petition under order 6 rule 17 cpc is disposed of on contest.

The petitioner/plaintiff being aggrieved by the Order dated 24/02/2023 passed by the Learned Trial Judge has come up with this application under Article 227 of the Constitution of India.

It is the contention of the petitioner that the Learned Trial Court acted illegally and with material irregularity in not considering the substantial facts which is required for proper adjudication of the case. It is further contended that the Learned Trial Court has failed to consider the intention of the legislature in incorporating order 6 rule 17 of the code of civil procedure which is to give a quietus to the litigation to avoid multiplicity of proceedings. It is also contended that the impugned order is bad in law and is liable to be set aside.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party no-2. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that the Learned Trial Court erred in refusing to allow prayer for amendment when the same is relevant and will not change the nature of the suit. Learned Advocate further submits that

while considering prayer for amendment Courts cannot go into the merits of the suit. Learned Advocate relies upon the following decisions.

- **Rajesh Kumar Agarwal and ors. Vs K.K. Modi and Order**
(Reported in (2006) 4 SCO-385)
- **Mount Mary Enterprises Vs M/S Jiusatna Medi Treat Pvt. Ltd.**
(Reported in 2015 SAR (Civil) 358)
- **Sushil Kumar Jain. Vs Manoj Kumar and Anr.**
(AIR-2009. S.C. 2544.)

Learned Advocate for the opposite party-no-2 submits that the application for amendment is not bona-fide and is rightly rejected.

Before proceeding to adjudicate the issue it is necessary to consider the provisions of amendment as contained in Order 6 Rule 17 of the Code of Civil Procedure.

Rule 17 of Order VI Code of Civil Procedure provides as follows:

17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matters before the commencement of trial.

In the case of **Mount Marry Enterprises (supra)** the Hon'ble Supreme Court observed as follows;

'7. In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs.13, 50,000/- but as the market value of the property was actually Rs.1, 20, 00,000/-, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.

8. It is also pertinent to note that the defendant had made an averment in para 30 of the written statement filed in Suit No.1955 of 2010 that the plaintiff had undervalued the subject matter of the suit. It had been further submitted in the written statement that the market value of the suit property was much higher than Rs. 14 lacs. The defendant had paid Rs.13.5 lacs for the said premises in the year 2002 when the said premises had been occupied by a tenant bank. Even according to the defendant value of the suit property had been undervalued by the plaintiff in the plaint. If in pursuance of the averment made in the

written statement the plaintiff wanted to amend the plaint so as to incorporate correct market value of the suit property, the defendant could not have objected to the amendment application whereby the plaintiff wanted to incorporate correct value of the suit property in the plaint by way of an amendment. The other contention that the valuation had already been settled cannot also be appreciated since the High Court has held that the said issue was yet to be decided by the trial Court.'

In the case of **Rajesh Kumar Aggarwal (supra)** the Hon'ble Supreme Court observed as follows:

'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 has expressed certain opinion 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 rights of both parties and to sub-serve the ends of justice. It is settled by 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.'

In the case of **Sushil Kumar Jain (supra)** the Hon'ble Supreme Court observed as follows:

'14. Before parting with this judgment, a short submission as advanced by the learned counsel for the respondents may be dealt with. Referring to the proviso to Order 6 Rule 17 of the CPC, the learned counsel for the respondents argued that the proviso clearly bars that any application for amendment either of plaint or of written statement can be allowed after trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. Therefore, the learned counsel for the respondents submitted that in view of the proviso to Order 6 Rule 17 of the CPC, the High Court as well as the Rent Controller had acted within their jurisdiction in rejecting the application for amendment of the written statement on the ground that the trial has already commenced and, therefore, no interference can be made in respect of the same.

In the case of *Jai Ram Manahar Lal V National Building Material Supply* reported in AIR-1957 S.C. 357 the Hon'ble held that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleadings of a party, unless it is satisfied that the party applying was acting mala-fide, or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission and however late the proposed amendment,

the amendment may be allowed, if it can be made without injustice to the other side.'

In the instant case the petition for amendment is filed by the plaintiff prior to commencement of trial and as such there is no restriction, in granting prayer for amendment, and the party is not required to satisfy the Court that in spite of due diligence the party could not raise the matter before commencement of trial.

The plaintiff/petitioner by way of amendment sought to make rectification of date with regard to execution of family settlement by Hari Kishun Singh father of Radhir Singh. This rectification of date is formal in nature, the details of devolution of property which plaintiff sought is also necessary to get the clear picture of the history of the suit property. The Learned Trial Court while considering petition for amendment went on to observe that the plaintiff by the proposed amendment petition intended to incorporate the allegation but allegation is not necessary to adjudicate the matter in issue as the suit is filed by plaintiff for partition of suit property. In this regard it is to be considered that as the suit is for partition of the property at 8 Jodhan Singh Road Ward No-2. P.O. Rishra P.S. Serampore District any public document showing particulars of the property and the names of the persons in which the property is recorded and Government Records where Particulars of the property are entered is relevant. The contention of the petitioner/plaintiff is that the suit property instead of being recorded as 8 Jodhan Singh Road is recorded before the Municipality as 8/4 Jodhan Singh

Road, 8/1 Jodhan Singh Road, 8/2 Jodhan Singh Road and 8/3 Jodhan Singh Road in the names of Sri Lalan Singh, Sri Dipak Narayan Singh Sri Jayram Singh and Sri Surya Deo Singh respectively, as a result of collusion by Municipal Authority and Jai Prakash Singh. Ordinarily when a property is partitioned by metes and bounds it is recorded before Municipal Authority on the basis sub-divisions and allotment of different holding number but before partition it is not sub-divided and there is no allotment of different holding number. Although such contention may appear to be an allegation but it is a part of controversy which is to be enquired and resolved.

In the facts and circumstances this Court is of the view that the amendment sought for by the plaintiff/petitioner is formal and will not change the nature of the suit and is necessary for determining the question in controversy between the parties. Thus the Order passed by the Learned Trial Court cannot be sustained and the same should be set aside.

Hence this application under Article 227 of the Constitution stands allowed. Order dated 24th February 2023 passed by the Learned Civil Judge (Senior Division) at Serampore Hooghly in Title Suit No-176 of 2021 is set aside. Prayer of the petitioner/plaintiff for amendment stands allowed. Petitioner/plaintiff is permitted to carry out the amendment within 3 weeks. The plaintiff/petitioner is further directed to implead the necessary parties.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury,J)