

18.03.2025
Court No. 06
Item 131 (ML)
Cp

C.O. 1722 of 2024

Dipali Guha
Vs.
Bulu Ghosh & Anr.

Mr. Debnath Ganguly
Mr. Supriyo Dutta
Mr. Aranya Saha

.....for the petitioner.

Mr. Kushal Chatterjee
Mr. Oishik Chatterjee
Mr. Aveek Saha
Mr. Shamuk Saha

.....for the opposite party no. 1.

Affidavit of service filed in Court today be kept
on record.

This application under Article 227 of the
Constitution of India is at the instance of the plaintiff
and is directed against an order being No.14 dated
September 29, 2023, passed by the learned Civil Judge
(Junior Division), Bidhannagar, in Title Suit No. 157 of
2022. By the order impugned, an application under
Order VI Rule 17 of the Code of Civil Procedure praying
for amendment of the plaint stood rejected.

Learned advocate appearing for the petitioner
submits that after coming across some of the
documents the petitioner sought to incorporate the
facts which subsequently came to the notice of the

plaintiff which the plaintiff wanted to incorporate by way of amendment of plaint. He submits that the proposed amendments are necessary for the purpose of deciding the real controversies between the parties in the suit. He submits that the nature and character of the suit will not be changed even if the proposed amendment is allowed.

Per contra, Mr. Chatterjee, learned advocate appearing for the opposite party no. 1, submits that the proposed amendments are contradictory with the original case made out in the plaint. He submits that the plaintiff/petitioner herein is trying to change the nature and character of the instant suit by way of amendment.

Heard the learned advocates for the respective parties and perused the materials placed.

The petitioner herein filed a suit praying for declaration that she holds the rights that were bestowed upon the original lessee being the successor of the original lessee and is entitled to peacefully reside, possess and enjoy the entire 'A' schedule property. A decree of declaration was prayed for to the effect that the defendant no. 1 is an illegal occupier in respect of Schedule B-2 and B-3 mentioned property and that the plaintiff is entitled to possess, enjoy and occupy the said Schedule B-2 and B-3 mentioned properties by evicting the defendants therefrom and is also entitled to

recovery of mesne profits. A decree for permanent injunction restraining the defendants and their men and agents from subletting or creating any third party interest in respect of B-1, B-2 and B-3 Schedule properties was prayed for.

It has been specifically stated in the plaint, more particularly in paragraph 6 thereof, that during the lifetime of Mridul Guha, since deceased, the said deceased with the permission of the plaintiff inducted a tenant, namely, Bulu Ghosh, the defendant no. 1 herein, by way of an agreement for tenancy dated July 4, 2017 in respect of the Schedule B-1 property at a monthly rental of 1500/- payable according to English calendar month and, thereafter, the defendant no. 1 illegally encroached upon the Schedule B-2 and B-3 property without the consent of the plaintiff. The plaintiff sought for eviction of the defendants from Schedule B-2 and B-3 property on the ground that they are illegal occupiers in respect of the said Schedule B-2 and B-3 property.

Though in the original plaint the case of the plaintiff was that the defendant no. 1 was inducted as a tenant in respect of the Schedule B-1 property but in the amendment application the plaintiff seeks to incorporate the fact that she came across three tenancy agreements dated January 4, 2017, April 16, 2015 and July 1, 2013. Though in the original plaint the plaintiff

did not dispute the execution of the tenancy agreement in respect of the B-1 Schedule property but by way of an amendment the plaintiff seeks to challenge the three tenancy agreements dated January 4, 2017, April 16, 2015 and July 1, 2013, on the ground that though the said documents contain the signature of the plaintiff but the contents of the documents remained unknown to the plaintiff as the defendant no. 1 and the deceased son of the plaintiff, namely, Mridul Guha was in collusion among themselves and taking advantage of the fact that the plaintiff was an ailing lady and was at an advanced stage, took the signatures of the plaintiff on many blank papers and executed a few documents such as, unregistered deeds of assignment, tenancy agreements, power of attorney and indemnity bonds etc. The plaintiff also sought to substitute certain paragraphs with some new paragraphs as would be evident from the schedule of the application for amendment. It further appears that the plaintiff also sought to substitute prayer 'b' and 'c' of the original plaint with new prayers.

After going through the schedule of amendment as well as the reliefs which the plaintiff sought to incorporate by way of an amendment, this Court finds that the plaintiff has sought to convert a suit for eviction of a trespasser into a suit challenging the deeds of assignment and for a declaration that the

defendants are tenants under the plaintiff in respect of the B-1, B-2 and B-3 Schedule properties.

It is well-settled that admissions cannot be allowed to be withdrawn by way of amendment, though the same may be allowed to be explained by way of an amendment. However, the instant case is not a case of explaining the admissions by way of amendment. Though the application for amendment was filed prior to the commencement of trial but the fact remains that the plaintiff is trying to make out a totally new case by way of amendment which is not permissible.

For the reasons as aforesaid, this Court is of the considered view that the learned Trial Judge was right in rejecting the application for amendment of plaint.

This court, therefore, is not inclined to interfere with the order impugned.

Accordingly, C.O. 1722 of 2024 stands dismissed. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date, upon compliance of usual formalities.

(HIRANMAY BHATTACHARYYA, J.)