
(2014) 01 CAL CK 0023
In the Calcutta High Court
Case No : C.O. No. 703 of 2011

Adhir Kumar Mondal

APPELLANT

Vs

Bimal Chandra Sanfui and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Citation : (2015) 4 CHN 325 : (2015) 1 WBLR 996

Hon'ble Judges : Sudip Ahluwalia, J

Bench : Single Bench

Advocate : Debasish Purkait, Advocates for the Appellant; Tarak Nath Halder, Advocates for the Respondent

Judgement

Sudip Ahluwalia, J.—This Revisional Application has been filed against the impugned Order No. 101 passed by the learned Civil Judge (Junior Division) 3rd Court at Baruipur, in Title Suit No. 190 of 2001 of the said Court on 03.08.2010. In passing such Order the learned trial Court was pleased to reject an Amendment application under Or. VI, R. 17 of the CP Court filed on behalf of the plaintiff/petitioner on 06.02.2009.

2. A copy of the application in question filed on behalf of the petitioner is Annexure-"B" to the application. In that the plaintiff/petitioner has specifically stated that he came to know about the existence of a Registered Sale Deed dated 17.06.1968, allegedly executed in favour of one Baburam Sanfui, the predecessor-in-interest of the Defendants/Opp. Parties by one Sudhanya Chandra Mondal, only on 18.01.2009 when his cross-examination was being taken up. He therefore filed the Amendment Application by means of which it was sought to be inserted in the Complaint that alleged vendor Sudhanya Chandra Mondal had no lawful authority to execute any such sale deed in favour of Baburam Sanfui, and that the same was in any case not acted upon on account of certain endorsement made on its back side by the alleged vendee.

3. The above contention of the petition that he came to know about the disputed

sate deed dated 17.06.1968 only at the time of his cross-examination in January, 2009 has however been comprehensively demolished by the learned Court below, which has taken note of the fact that the factum of such sale deed had been mentioned in the Written Statement filed on behalf of the defendant almost 7 years earlier i.e. in the 2002. In essence therefore, the rejection of the Application by the trial Court was on the ground of delay in seeking the amendment within 3 years from the date of the plaintiffs alleged knowledge about the Sale Deed in question.

4. Now the petitioner has cited a decision of the Apex Court in *South Konkan Distilleries and Another Vs. Prabhakar Gajanan Naik and Others*, in which it has been held "It is well settled that the Court must be extremely liberal in granting the prayer for amendment, if the Court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation. amendment should not be allowed. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really subserve ultimate cause of justice and avoid further litigation." In the given facts and circumstances of present case, it may be held that the proposed amendment as sought for could have been considered a little more liberally. The plaintiff/petitioner by seeking the same was only wanting to give his version in respect of a plea which had transpired before him from the defence raised on behalf of the Opp. Parties, and in respect of which he claims to be unaware of while filing the suit. Of course strictly speaking he first came to know about the registered sale deed from defendant's Written Statement filed way back in 2002. But that delay need not have been viewed so strictly. This is so because by the proposed amendment, he did not seek to actually deny execution of the Registered Sale Deed in question, but only wanted to draw attention of the Court to certain endorsement(s) allegedly made by the vendee on the back side of such Deed, which may or may not have ultimately made any difference to the final decision in the suit. In fine, the plaintiff/petitioner wanted to simply record an assertion that the Deed in question was not enforceable or had not been acted upon. This assertion was at least partially on a question of law, which possibly could have been decided by carefully scrutinizing and interpreting the Vendee's alleged endorsement(s) on the back side of the Document in question at the stage of arguments, and for deciding which no additional detailed evidence or undue delay in disposal of the suit may have been occasioned.

The Revisional application is therefore allowed on Contest without Costs. The impugned Order passed by the learned Court below is accordingly set aside and the petitioner is permitted to amend his original plaint strictly in accordance with the amendment schedule in the form of additional Para 4(Ka) as given in the Typed (not hand-written) portion alone of his amendment petition, a copy of which is Annexure-B to the Revisional application, subject to liberty in favour of the defendants to file any Additional Written Statement, and award of such Costs

in their favour, as the learned trial Court might deem fit and proper.