
(2004) 02 CAL CK 0056
In the Calcutta High Court
Case No : C.O. No. 800 of 2003

Amarendua Prasad Roychowdhury and Others APPELLANT
Vs
Prithwish Ghoshal and Others RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2004) 4 CHN 74

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Amal Krishna Saha, for the Appellant; Tapan Kr. Mukherjee and Sandip Das, for the Respondent

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an application filed by the petitioner praying for revision of twin orders being No. 170 dated 27.8.2002 & No. 167 dated 2.5.2002 passed by learned Civil Judge (Jr. Div.), 1st Court, Diamond Harbour in T.S. 90/1975.

2. The circumstances leading to the above application are that the petitioners brought the said suit as plaintiffs for eviction of licences from the disputed property stating that Aurobinda Ghoshal, predecessor of O.P. Nos. 1 to 3. was living at the disputed property as a licensee of them and on his death in 1973, on the prayer of his heirs the O.Ps. they were granted licence to live there till the plaintiffs asked for possession. On revoking licence the plaintiffs asked them to deliver khas possession. The plaintiffs sought for amendment of the plaint by incorporating a prayer for a decree for declaration of title in "kha" schedule property and injunction restraining the defendants from dispossessing the plaintiffs and from changing the nature and character of the properties which was dismissed vide Order No. 167 dated 2.5.2002. The petitioners then filed an application for withdrawal of the suit with liberty to sue afresh which too was dismissed vide Order No. 170 dated 27.8.2002.

3. Being aggrieved by, and dissatisfied with, the aforesaid orders, the plaintiffs

have preferred the present revision as petitioners.

4. All that now requires to be considered is whether the learned Court below was justified in passing the above orders.

5. Mr. Amal Krishna Saha, learned Counsel for the petitioners, on referring four decisions reported in AIR 1968 SC 997, AIR 1966 SC 1267, Anadi Behera Vs. Khatun Nisa Bibi, .) advanced argument contending that since the O.Ps. denied their title in the disputed property and description of their title over the property is cryptic, the present amendment is necessary to avoid multiplicity of suits. Mr. Tapan Kumar Mukherjee, learned Counsel for the O.Ps., on the other hand, on citing the decisions reported in Shri Muni Lal Vs. Smt. Niki Mansa Ram, , Kanailal Das and Another Vs. Jiban Kanai Das and Another, & Dr. Padmini Mishra Vs. Dr. Ramesh Chandra Mishra, contended that it has already been averred in the plaint that the plaintiffs are owners of the disputed property and so the question of further amendment to clarify the alleged title does not arise and that apart from abnormal delay in filing the petition for amendment, the proposed amendment, if allowed, will introduce a new case and as such the impugned order should not be interfered with.

6. The real spirit of law behind the provision of Order 6 Rule 17, C.P Code is that amendments must be allowed which may be deemed necessary in the context of the factual score of particular case, the object being to avoid multiplicity of suits [Nichhalbhai Vallabhai and Others Vs. Jaswantlal Zinabhai and Others, , AIR 1968 SC 165.] It is a guiding principle of amendment that generally speaking, all amendments ought to be made "for the purpose of determining the real question in controversy between the parties to any proceeding or of correcting any defect or error in any proceeding". The rules of procedure are intended to be a hand-maid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules and procedure. The Court always allows amendment unless it is satisfied that there was mala fide or the blunder had caused injury to the opponent which could not be compensated by costs. However, negligent or careless may have been the first omission and however late the proposed amendment, it may be allowed if no injustice is caused to the other side Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, . Even very defective pleadings may be permitted to be cured so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional Court-fees or of costs of the other side are complied with except of course if lapse of time has barred the remedy of newly constituted cause of action Ganesh Trading Co. Vs. Moji Ram, The rule has been extended so far that even introduction of a new case is no ground for refusal so long as the defendant has the opportunity of meeting the new case by amendment of the written statement and by leading evidence in support of the defence [AIR 1954 Nag 54; 1983(2) R.C.J. 126 ;1996(1) CHN 67.]

7. In the case on hand, the plaintiffs as licensors and obviously as owners of the

disputed property have brought the said suit for eviction of licensees and by the proposed amendment which is undoubtedly a delayed one they have simply clarified their acquisition of title over the said property, denied the defendants' claim of title, with addition of declaration of title, injunction and decree for mesne profits in the prayer portion and a new schedule "Kha" on the face of defence pleadings which, if allowed, in no way can be said to introduce a new and inconsistent case, since it was and will remain a suit for ejectment of licensees. Unless the said amendment be allowed the plaintiffs would not be able to adduce any evidence in this regard nor the Court would be in a position to consider it in the absence of specific pleadings. The amendment, if necessary, may be allowed at any stage of the proceeding but not after commencement of the trial unless the Court comes to the conclusion that despite due diligence the party could not have raised the matter before commencement of the trial. The facts and circumstances of the decisions cited by the learned Counsel for the O.Ps. being different, the same cannot be held to be applicable here.

8. In the light of the above discussion, the learned Court below having failed to exercise jurisdiction vested in it, the impugned order being No. 167 dated 2.5.2002 dealing with the application for amendment of plaint is not sustainable and as such it be set aside.

9. In view of the above, the question of revision in respect of Order No. 170 dated 27.8.2002 which arose on account of refusal of the prayer for amendment does not arise.

10. The revisional application be allowed in part on contest but without any cost.

11. The amendment sought for by the plaintiffs be allowed but with cost of Rs. 500/- to the contesting defendants to be paid within one month from the date of receipt of this order. The plaint and register be amended accordingly. The O.Ps./defendants are at liberty to file additional W.S., if any, within one month from the date of payment or deposit of the cost. If the said cost be not paid or deposited in favour of the O.Ps. within the stipulated period as mentioned above, the application for amendment would stand dismissed and the order passed in this revisional application would not be operative.