
(2019) 11 CAL CK 0074

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (CO) No. 1978 Of 2019

Champa Mondal (Gope) & Ors

APPELLANT

Vs

Kamal Bouri & Anr

RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2019) 11 CAL CK 0074

Hon'ble Judges : Manojit Mandal, J

Bench : Single Bench

Advocate : Mani Shankar Chattopadhyay

Final Decision : Dismissed

Judgement

Manojit Mandal, J

1. This application is at the instance of the petitioners/plaintiffs and is directed against the order dated 11/04/2019 passed by the learned Civil Judge (Senior Division) at Raghunathpur, Purulia in Title Appeal No. 21 of 2016 thereby rejecting an application under Order 6 Rule 17 of the Code of Civil Procedure (hereinafter referred to as "C.P.C.") for amendment of the plaint. The petitioners/plaintiffs instituted the suit for declaration that they are owners of the property mentioned in the schedule to the plaint, permanent injunction and other reliefs.

2. Respondents appeared in this suit and contested the same. Issues were framed. On analyzing the evidence, both oral and documentary, produced before the learned Civil Judge (Junior Division), Raghunathpur, Purulia by the parties, learned Civil Judge (Junior Division) was pleased to dismiss Title Suit No. 58 of 2012.

3. The petitioners/plaintiffs preferred an appeal being Title Appeal No. 21 of 2016 (old number), before the Court of the learned Civil Judge (Senior Division), Raghunathpur, Purulia against the said order of dismissal. Thereafter, the said appeal was fixed for hearing and on the date of hearing of the appeal, the said

amendment application under Order 6 Rule 17 of CPC was filed by the appellants on 25/09/2018.

4. Upon due consideration of the application, the learned Civil Judge (Senior Division) has rejected the said application holding, inter alia, that the proposed amendments are of such a nature that it cannot be presumed that the plaintiffs did not know those facts or would not have known those facts with due diligence at the time of the commencement of the trial. Accordingly, the said application is hit by the proviso to Order 6 Rule 17 of the CPC and is rejected by the learned lower Appellate Court. Being aggrieved, this application has been preferred.

5. Having heard the learned advocate appearing on behalf of the respondents and on perusal of the materials on record, I am of the view that the learned lower Appellate Court has reached at a right conclusion. The said suit was filed in the year 2012 and the amendment was sought for after six years from the date of filing of the suit when both the parties had already adduced evidence in support of their respective pleadings and contentions and judgment has already been delivered on the basis of the said oral and documentary evidence. If I look at the application for amendment of the plaint, it appears that the proposed amendment is, in fact, an introduction of a new case, as well as wiping out the admission already made by the petitioners/plaintiffs. At this stage if the order, allowing amendment of the plaint to incorporate a new case/ facts, is allowed, then there would be no end to any litigation and no trial would ever conclude. Thus, I find that though the character of the suit remains the same by the proposed amendment but a new case would be introduced by the same. Since the parties have already adduced evidence over the suit property as described in the schedule to the plaint, if the proposed amendment is allowed, certainly, the case of the plaintiffs would be changed and in such circumstances, the opposite parties would be prejudiced and such prejudice, in my view, cannot be compensated by costs.

6. The amendment would naturally invite additional written statement, framing of issues on the facts which is alleged to have happened long time back before the date of filing of the suit. So, the amendment would naturally call for factual question of old facts leading to re-opening the suit again. Moreover, no justified reasons have been assigned for amendment. The amendment, in my view, is not for fair adjudication of the suit at all.

7. Accordingly, I am of the opinion that the learned lower Appellate Court has rightly rejected the prayer of the plaintiffs. In my view, the conclusion arrived by the learned lower Appellate Court is correct. So, there is no scope of interference at the belated stage.

8. Accordingly the application is dismissed. Considering the facts and circumstances the case, there will be no order as to costs.

9. Urgent Photostat certified copy of this order, if available, be made to the parties upon compliance of all requisite formalities.