
(2010) 10 CAL CK 0030
In the Calcutta High Court
Case No : C.O. No. 602 of 2009

Chandra Sekhar Ojha

APPELLANT

Vs

Bijay Kumar Ojha and Others

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Citation : (2010) 10 CAL CK 0030

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Probal Kr. Mukherjee and Surid Sur, for the Appellant; Amitava Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the plaintiff and is directed against the order No. 48 dated October November 10, 08 passed by the learned Civil Judge (Senior Division) at Asansol in Title Suit No. 15 of 2006 thereby rejecting an application for amendment of the plaint.

2. The short fact of the case is that the plaintiff instituted the suit for partition and permanent injunction against the defendants/opposite parties in respect of several properties as mentioned in the schedule of the plaint. He has contended that the suit properties are joint properties and the same have not been partitioned by metes and bounds and as such, he is facing difficulties in peaceful enjoyment of his share of the suit properties. So, he has filed the suit for partition and permanent injunction.

3. In that suit, the defendants/opposite parties filed a joint written statement and they are contesting the said suit. The issues have been framed on the basis of the pleadings of both the parties. Thereafter, the suit was at the stage of peremptory hearing. The P.W.1 was examined and cross-examined. At that time, the plaintiff/petitioner herein filed an application for amendment of the plaint contending, inter alia, that the schedule "c" property as mentioned in the plaint

was not partible and so he wanted to delete the schedule "c" property from the plaint. That application was rejected by the order impugned. Being aggrieved, he has filed this application.

4. Mr. Probal Kr. Mukherjee, learned Advocate appearing on behalf of the plaintiff/petitioner, submits that the plaintiff having filed the suit for partition and permanent injunction and the property in question being not partible and situated outside West Bengal could well be kept outside the purview of this partition suit. Therefore, the learned Trial Judge was not justified in rejecting the prayer for amendment of the plaint.

5. On the other hand, Mr. Amitava Mukherjee, learned Advocate appearing on behalf of the opposite parties, supports the judgment.

6. Now the point that emerges for consideration is whether the impugned order could be sustained.

7. Upon hearing the learned Advocate for the petitioner and on perusal of the materials on record, I find that the schedule "c" property, as mentioned in the plaint, comprises 5 plots within the District: Buxar (Bhojpur) under P.S. Dumraon measuring the extent of land as described therein. The plaintiff did not describe the nature of this property but he has simply stated that he has share to the extent of 1.24 acres in plot No. 36 out of 1.25 acres and 1.58 acres in plot No. 37 measuring 1.58 acres of land (i.e. the entire plot). From the description of the "c" schedule property, it does not appear that such property is not partible. Even on interrogation the learned lawyer for the petitioner could not enlighten in this regard. In fact, in a suit for partition, the parties should include all the joint properties in hotchpotch. If I look into the plaint case, I find that the plaintiff has specifically stated that the properties described in schedule "c" was their paternal property and he inherited the same along with the other defendants. In fact, the plaintiff has prayed for relief in respect of such properties in the prayer of the plaint against the defendant No. 1. During cross-examination, when it transpired that the plaintiff/petitioner herein had transferred the said properties as mentioned in the schedule "c" of the plaint, he has prayed for deletion of such property from the plaint. During his deposition, the P.W.1 has stated that the properties described in schedule "c" to the plaint were acquired by his father, Radhanandan Ojha by diverse registered kobalas from different persons and that after the death of his father, he, by suppressing the real state of affairs, had sold the said properties to different persons and thus he had received the consideration money from the purchasers. Thus, I find that in order to obviate such statements, he has wanted to delete these properties. Since the suit is for partition and for permanent injunction, such admission cannot be taken away. If the plaintiff had actually disposed of such properties without rendering accounts of the same to the other co-owners, the admission as made by the plaintiff in his deposition cannot be allowed to be withdrawn by way of amendment of the plaint. Though, the findings of the learned Trial Judge that if the prayer for amendment is allowed, it will cause change the nature and character of the suit,

cannot be supported, in consideration of the intention of the plaintiff to withdraw his admission and to avoid the payment of the sale proceeds of the lands as described in schedule "c" properties to the other co-sharers, his prayer for amendment of the plaint should not be granted.

8. Accordingly, I hold that though the reasoning of the learned Trial Judge is not correct, he has concluded rightly by rejecting the prayer for amendment of the plaint. Therefore, the impugned order should be sustained. There is nothing to interfere with it.

9. Accordingly, this application is dismissed.

10. Considering the circumstances, there will be no order as to costs.

11. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.