
(2016) 08 CAL CK 0007
In the Calcutta High Court
Case No : C.O. 2617 of 2016.

Debdas Mukherjee - Petitioner @HASH Smt. Gita Ghosh - Opposite Party

Date of Decision : 09-08-2016

Acts Referred:

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

Citation : (2016) 3 CalLJ 423 : (2017) 2 ICC 425 : (2017) 1 WBLR 596

Hon'ble Judges : Harish Tandon, J.

Bench : Single Bench

Advocate : Mr. Sabyasachi Bhattacharya, Sr. Advocate, Mr. Ayanava Bhattacharya, Advocate, for the Petitioner; Mr. Nilanjan Bhattacharjee, Mr. Arpan Guha and Ms. Paramita Roy, Advocates, for the Opposite Party

Final Decision : Dismissed

Judgement

Mr. Harish Tandon, J. - This revisional application is directed against an order no. 39 dated 17th June 2016 passed by learned Civil Judge (Junior Division), Second Court, Howrah in Title Suit No. 154 of 2009 (Title Suit No. 3842 of 2014) by which an application for amendment of the plaint is rejected.

2. The plaint proceeds that the mother of the petitioner, namely, Smt. Renubala Mukherjee was the owner of the suit premises and executed and registered a deed of gift dated 3rd January 2008 gifting the suit premises to the plaintiff/petitioner and also delivered the possession thereof. It is further stated therein that the said deed of gift was acted upon as the petitioner accepted the same and, therefore, acquired a right, title and interest in respect thereof. A notice was issued to the defendant/opposite party asking her to quit, vacate and hand over the possession of the suit premises and on refusal to do the same, the present suit is filed.

3. In the written statement, the defendant/opposite party could not deny the right, title and interest of the mother but created a confusion that rent was paid to one Renukabala Mukherjee.

4. My attention is drawn to the affidavit as to examination-in-chief more

particularly paragraph 7 thereof where the defendant/opposite party categorically admitted that the mother of the petitioner i.e. Smt. Renubala Mukherjee inducted the husband of the opposite party as premises tenant at holding no. 38/7, Kashinath Chatterjee Lane but thereafter shifted to holding no. 93/3, Shibpur Road. The suit reached the stage of trial and after a closure of the evidence an application for amendment is taken out by the petitioner seeking to incorporate the factum of acquisition of title by the mother. The Trial Court proceeded to reject the said application as the application for amendment lacks material explanation required under the proviso of Order 6, Rule 17 of the Code of Civil Procedure. Apart from the above, there is no other reasons assigned by the Trial Court rejecting the application for amendment.

5. This Court does not find any infirmity and/or illegality in the impugned order and the reasons assigned by the Trial Court.

6. The matter can be viewed from another angle as well. The defendant/opposite parties have categorically admitted the induction of her husband by the mother of the petitioner, namely, Renubala Mukherjee but have denied the right, title and interest of the petitioner on the strength of deed of gift. Once the mother has been admitted to have inducted the husband of the petitioner, it is immaterial to elucidate the factum of acquisition of title by the mother. The amendment which is necessary for the purpose of deciding an issue involved in the suit should be allowed by the Court and not when it would be a mere surplusage even in the guise of elucidation of fact already pleaded in the plaint.

7. This Court does not find any ground warranting the interference of the impugned order.

8. The revisional application is thus dismissed.

9. There shall be no order as to costs.

10. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.