
(2015) 06 CAL CK 0065
In the Calcutta High Court
Case No : C.O. No. 852 of 2015

Jyotsna Bala Maity and Others

APPELLANT

Vs

Hansibala Pramanik and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

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

Citation : (2015) 4 CALLT 187

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Debabrata Roy and Apurba Krishna Das, for the Appellant; Asish Bagchi and Amit Baran Dash, for the Respondent

Final Decision : Allowed

Judgement

Samapti Chatterjee, J.—Challenging order No. 125 dated 21st February, 2015 passed by Sri Suthirtha Banerjee, Learned Civil Judge (Junior Division) 2nd Additional Court, Contai, in Title Suit No. 5 of 2007 whereby the Learned Judge allowed application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of written statement, the plaintiff/petitioner filed the instant revisional application. Mr. Debasish Ray, learned Advocate appearing for the petitioner contended that the Learned Judge erred in law by allowing the said application for amendment of written statement whereby the defendants/opposite parties sought to delete/withdraw the admissions by way of amendment application which is not permissible in law.

2. Mr. Ray further vehemently urged that admission cannot be withdrawn or omitted by filing application under order 6 Rule 17 of the Civil Procedure Code.

3. Mr. Ray further contended that after lapse of more than 17 years of filing of the written statement the defendant Nos. 6 to 7 on 20.12.2014 filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement and in the said proposed amendment virtually sought to

withdraw all the admission relating to ownership and possession of the said Kaniprasad @ Kaliram Maity as averred in the original written statement and made out an altogether new case and also did not disclose the source of such belated information and collection of documents. In support of his contention Mr. Ray relied on a Three Judge Bench of a Supreme Court Judgment reported in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., which are quoted below:--

"Para-7 - The trial Court rejected the application of the defendants for amendment. One of the reasons given by the trial Court is that the defendants wanted to resile from admissions made in paragraph 25 of the written statement. The trial Court said that "the repudiation of the clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law". The trial Court held the application for amendment to be not bona fide.

Para-8 - The High Court on revision affirmed the judgment of the trial Court and said that by means of amendment the defendants wanted to introduce an entirely different case and if such amendments were permitted it would prejudice the other side.

Para-9 - The decision of the trial Court is correct. The defendants cannot be allowed to change completely the case made in paragraphs 25 and 26 of the written statement and substitute an entirely different and new case."

4. Mr. Ray also relied on a Supreme Court decision reported in Heeralal Vs. Kalyan Mal and Others, (where the Hon"ble Supreme Court relied on the decision reported in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., and held that while granting amendment of written statement no inconsistent or alternative plea can be allowed which would displace the plaintiff"s and cause him irretrievable prejudice.

5. In conclusion Mr. Ray submitted that order No. 125 dated 21st February, 2015 passed by Sri Suthirtha Banerjee, Learned Civil Judge (Junior Division), 2nd Court, Contai in Title Suit No. 5 of 2007 whereby allowed application under order 6 Rule 17 of the Code of Civil Procedure should be set aside.

6. Per contra, Mr. Asis Bagchi, learned Advocate appearing for the defendants/opposite parties contended that in the written statement the defendants/opposite parties only admitted the existence of the documents but did not admit the contents of the said documents. Therefore, it cannot be suggested that defendants/opposite parties admitted the contents of the documents as has been emphasized by Mr. Ray.

7. Mr. Bagchi also vehemently argued that by allowing the said application under Order 6 Rule 17 of the Civil Procedure Code for amendment of the written statement does not alter the nature and character of the original written statement. Therefore, the Order No. 125 dated 21st February, 2015 passed by Sri Suthirtha Banerjee, Learned Civil Judge (Junior Division), 2nd Additional

court, Contai in Title Suit No. 5 of 2007 allowing the application under Order 6 Rule 17 of the Code of Civil Procedure does not deserve any interference by this Hon"ble Court.

8. Mr. Bagchi also contended by allowing the said application under Order 6 Rule 17 of the Code of Civil Procedure by the Learned Judge the nature and character of the suit does not alter. Therefore, question of causing prejudice to the plaintiff's case does not and cannot arise.

9. Mr. Bagchi further contended that in case of allowing amendment of written statement Courts are inclined to be more liberal than of plaint. Therefore question of prejudice is less likely to operate with some rigour in the former than in the later case. In support of his contention Mr. Bagchi relied on a Supreme Court decision reported in (I) Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., and also relied on (II) 2010 (2) CLJ (CAL) Page 748 (Shew Prakash Kajaria & Another v. Sherelal Kajaria and Shreeram Kajaria & Others) Paragraphs 39, 33, 37 and 58.

Para-37 - ".....that the original plaintiffs as well as the transposed plaintiffs...the appellants" amended version and this, the issue whether Maha was a member of the Mitakshara coparcenary at the time of his death is to be decided in the suit at the time of trial..."

10. In conclusion Mr. Bagchi submitted that the impugned order dated 21st February, 2015 passed by the Learned Civil Judge (Junior Division), 2nd Additional Court, Contai in Title Suit No. 5 of 2007 does not deserve any interference by this Hon"ble Court. Therefore, the present revisional application should be dismissed by this Hon"ble Court on the ground of lack of merits.

11. After considering the submissions advanced by the learned Advocates appearing for the respective parties and after perusing the pleadings in the revisional application and also going through the application under Order 6 Rule 17 of the Civil Procedure Code and records I am of the view that the belated application for amendment of written statement filed by the defendants/opposite parties after 17 years of filing the original written statement without assigning any cogent reasons of such belated application for amendment of written statement cannot and should not be mechanically allowed as it is the amendment of written statement and not the amendment of plaint.

12. I also cannot ignore that by this application for amendment of written statement the defendants/opposite parties sought to withdraw the admission made in the original written statement which is not permissible in the eye of law.

13. It is noticed from the records that defendants Nos. 6 and 7 on 20.12.2014 filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement and in the said proposed amendment virtually withdrew the admission of ownership and possession of the said Kaniprasad @ Kaliram Maity as disclosed in the original written statement at

Para-14 and made out an altogether new case and also did not disclose the source of such belated information and collection of documents.

14. It is true that an amendment of plaint and amendment of a written statement are not necessarily governed by exactly the same principle though some general principles certainly common to both. Adding a new ground of defence or substituting or altering a defence does not raise any problem in respect of amendment of written statement as it could have made in amendment of plaint. But in the case in hand grounds taken by the plaintiff/petitioner and the entire argument advanced by Mr. Ray was on the point that by the said application for amendment of written statement the defendants/opposite parties are virtually seeking to withdraw admission as made by the defendants in the original written statement and thereby made out an altogether a new case which is not at all permissible in law. In my considered view in this application for amendment of written statement seeking withdrawal of admission made in original written statement cannot be permitted.

15. Now I deal with the decisions cited by Mr. Bagchi in support of his contentions. In the case of 2010 (2) CLJ (CAL) (supra) it was the case of the appellants that the issue as to original plaintiffs as well as the plaintiffs actually was a member of the Mitakshra Coparcenary at the time of his death is to be decided at the time of trial. Therefore, the application for amendment of written statement was allowed by the Hon'ble Court but in the present case by the application for amendment of written statement the defendants/opposite parties virtually sought to withdraw the admission made in the original written statement. Not only that by the said amendment of written statement the defendants/opposite parties also altogether created a new case thereby changed the nature and character of the defence case originally made out after lapse of 17 years of filing the original written statement. No cogent reason has been pleaded for this long delay.

16. It cannot be disputed that amendment of written statement can be allowed if it does not alter the nature and character of the defence and also does not prejudice the plaintiffs but by reasons of the impugned order No. 125 dated 21st February, 2015 the Learned Judge allowed the defendants/opposite parties to withdraw the admission made in the original written statement which in my considered view cannot be accepted.

17. Therefore, I find some substance in the argument of Mr. Ray that by allowing application for amendment of written statement admission made in the original written statement by the defendants/opposite parties cannot be withdrawn and also considering the Supreme Court decision reported in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Latha Ram and Co., and also considering the decision reported in Heeralal Vs. Kalyan Mal and Others, I am of the opinion that by the impugned order No. 125 dated 21st February, 2015 the Learned Judge by allowing the application for amendment of written statement has virtually allowed the defendants/opposite parties to withdraw the admission

made in original written statement filed 17 years back which in my considered opinion cannot be sustained. The impugned order in my opinion suffers from material illegality and therefore can not be sustained.

18. Therefore, the impugned order No. 125 dated 21st February, 2015 passed by the Learned Civil Judge (Junior Division), 2nd Additional Court, Contai in Title Suit No. 5 of 2007 is hereby set aside and quashed. The revisional application is allowed without any order as to costs.

Urgent photostat certified copy, if applied for, be supplied to the parties after complying all formalities.