

(2018) 03 GAU CK 0012
In the Gauhati High Court
Case No : CRP 393 of 2013

MD. BADSHAH HUSSAIN

APPELLANT

Vs

BUDHIN CHUTIA @ BUDDHINDA CHUTIA

RESPONDENT

Date of Decision : 07-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 94, Section 151, Order 6 Rule 17, Order 39 Rule 1, Order 39 Rule 2, Order 29 Rule 2A, Order 39 Rule 2A
Constitution of India, 1950 — Article 32, 131, 227

Citation : (2018) 03 GAU CK 0012

Hon'ble Judges : KALYAN RAI SURANA

Bench : Single Bench

Final Decision : Allowed

Judgement

1.The matter was heard-in-part on 22.02.2018 when this Court had heard Mr. S. Murarka, learned counsel for the petitioner, who had concluded his argument. Today, I have heard Mr.

J. Ahmed, the learned counsel for the respondent.

2. By this revision under Article 227 of the Constitution of India read with Section 151 of the Civil Procedure code, the petitioner has challenged the

order dated 30.07.2013 passed by the learned Munsiff at Charaideo, Sonari in Misc. (J) Case No.11/2013 in Title Suit No.1/2012. By the impugned

order, the prayer for amendment under Order VI Rule 17 read with Section 151 CPC was rejected.

3. The learned counsel for the petitioner submits that the suit was otherwise fixed at the stage of framing of issues. It is submitted that the suit land

wherein houses were constructed have some vacant portion in the northern side and some space on the northern side. It is projected that on

20.05.2012, the respondent had started to construct a pacca path. It is under the said circumstance, the suit being Title Suit No.1/2012 was filed.

Along with the said suit, a separate application under Order XXXIX Rule 1 & 2 CPC, being Misc.(J) Case No.7/2012 was filed praying for ad-interim

injunction to restrain the respondents from occupying or doing any works/ activities including earth filling over the suit land. It is further projected that

the learned trial court by the order dated 29.05.2012 granted ad-interim injunction. However, it is alleged that by violating the said order on 06.06.2012,

the respondent started some works on the suit land by digging the Schedule-A land and in the process boundary wall of the petitioner was up-rooted

along with the door standing therein for ingress and outgress. It is projected that the petitioner had informed the police and also filed an application

under Order XXIX Rule 2A CPC, being Misc. (J) Case No.12/2012 alleging violation of the ad-interim order of injunction. In the meanwhile, the

learned trial court by the order dated 18.06.2012 passed in Misc.(J) Case No.7/2012 vacated the ad-interim order of injunction by directing the parties

to maintain status-quo. It is further alleged that even after passing of the order of status-quo on 18.06.2012, the respondent had violated the said order

by constructing a bamboo door on 12.07.2012. Therefore, the petitioner had filed another application under Order XXXIX Rule 2A CPC, alleging

violation of the order of status-quo. By continuing with the work, it is alleged that pacca path was constructed by using bricks and sands. Therefore,

another application was filed under Order XXXIX Rule 2A CPC, which was registered as Misc.(J) Case No.27/2012.

4. It is further alleged that during the pendency of the suit, the respondent had put three numbers of PVC pipes measuring 20 feet X 4 inch by digging

the Schedule-A land and thereby forcibly dispossessed the petitioner from Schedule-A land by converting the same into a pacca path and his door was

completely closed and the respondent had also put-up a bamboo door at the ingress of the Schedule-A land. So, the petitioner had filed a prayer for

amendment under Order VI Rule 17 CPC, which was registered Misc. (J) Case No.11/2013 and he prayed for insertion of paragraph-11 (A) and 11

(B) and for incorporating the prayer at paragraph-12 (III) and 12 (IV).

5. The learned trial court by the impugned order dated 30.07.2013, dismissed the said application for amendment, inter-alia, on the ground that if such

amendment was allowed it would rise to new cause of action, which cannot be permitted. It is submitted that the amendment was sought for on the ground that he was dispossessed from the boundary of the suit land.

6. By referring to the prayer made in the plaint, the learned counsel for the petitioner has projected that as the petitioner was apprehending dispossession, he had prayed for ad-interim injunction and that his apprehension had turned into a reality when by violating the injunction order, the petitioner had been dispossessed. Hence, he has prayed for an appropriate direction for permitting the amendment to be incorporated in the plaint.

7. Opposing the prayer made by the petitioner, the learned counsel for the respondent has made his submissions and in addition, a copy of the written argument has been submitted. It is submitted that the statements made in the plaint were denied by the respondent and it was stated that the petitioner was a habitual land grabber. By referring to the relevant order passed by the learned trial court, as produced by him, it is submitted that after violation was alleged in connection with Misc.(J) Case No.12/2012, the learned trial court had directed the concerned police to give a report. Accordingly, as per the police report, which was produced before the learned trial court, police had denied allegations of violation of the injunction order by the respondent and that after such police report and the order dated 21.08.2012, wherein the learned trial court had recorded receipt of the report from the Office-in-Charge, Moranhat Police Station, the petitioner had filed an application under Section 151 CPC to remove the bamboo door stated to have been put up by the respondent. However, the learned trial court by the order dated 08.03.2013, had rejected the said prayer on the ground that as the petitioner had filed an application under Order XXXIX Rule 2A CPC, the application under Section 151 CPC cannot be entertained and such provision can be invoked when there is no specific provision in the CPC. It is submitted that after such adverse orders, the petitioner had prayed for amendment of the plaint. It is submitted that as the petitioner had made an application under Order 39 Rule 2A CPC, alleging violation of the injunction order and if the respondent is found guilty of such violation, then only the court is to pass appropriate order. But, no prayer for amendment could be filed and therefore, the prayer for amendment was rightly rejected.

8. The learned counsel for the petitioner has placed reliance on the cases of -

- (i) (2006) 4 SCC 385 (Rajesh Kumar Aggarwal & Ors -Vs.- K.K. Modi & Ors);
- (ii) (2009) 10 SCC 84 (Rameshkumar Agarwal -Vs.- Rajmala Exports P. Ltd. & others) and
- (iii) 2018 (1) GLR 605 (Sayeda Rubia Begum & another -Vs.- Dasarath Pradsad).

9. While the learned counsel for the respondent has place reliance on the following citations:

- (i) (2008) 15 SCC 610 (Ashutosh Chaturvedi -Vs.- Prano Devi @ Parani Devi & Ors);
- (ii) (2009) 3 SCC 46 (Alkapuri Co-operative Housing Society Ltd. -Vs.- Jayantibhai Naginbhai (deceased) through LRs.); and
- (iii) (2011) 12 SCC 268 (State of M.P. -Vs.- Union of India and another).

10. On a perusal of the materials on record, it appears that the suit was filed on 29.05.2012. In Misc.(J) Case No.11/2013, it has been projected that

by disobeying the order of the learned trial court, the respondent had dug up the Schedule-A land and installed three pipes on 06.06.2012 and that the

respondent had put up a bamboo door in Schedule-A land on 12.07.2012 and finally on 01.08.2012, the Schedule-A land was converted into a pacca

path. Therefore, as per the consequence of events projected in the amendment petition, all the events had taken place after the suit was filed. The

proposed amendment as envisaged in the amendment petition relates to those events which were subsequent to the sequence of events projected in

the suit. Consequently, a prayer was sought to be incorporated by way of amendment by praying for decree for khas possession of the Schedule-A

land by breaking and dismantling the structure put up and for a decree of khas possession of Schedule-A by removing the earth filling. To the

aforesaid facts, this court had examined the submissions made by the learned counsel for the respondent. It was submitted that after a series of

petitions being two petitions under Order XXXIX Rule 2 A CPC and an application under Section 151 CPC were filed by the petitioner, but no

favourable order was ever passed, then only the petitioner had prayed for an amendment. It was also submitted that in order to suppress material

facts, copy of the written statement was not submitted and if the respondent had actually violated any interim order, it was open for the learned trial

court to pass appropriate order and grant remedy to the petitioner. The said submission does not convince this Court because of the fact that filing of

case under Order XXXIX Rule 2A CPC and for pendency of such a case cannot be treated as a bar and/or an impediment for the petitioner to move

an application for amendment of the plaint. In the opinion of this Court, an application against the disobedience of order of injunction is a

supplementary proceeding within the meaning of Section 94 CPC. In the opinion of this Court, an order passed in supplementary proceeding may not

influence the ultimate judgment that should be passed in the suit. Therefore, if the petitioner is aggrieved by the subsequent events which had

occasioned after the suit had been filed, he had every right to pray for amendment of subsequent events on record. Naturally, as it has been alleged

that the petitioner was dispossessed during the pendency of the suit and by seeking amendment, he would have alleged the existence of new cause of

action. But there is no prohibition to incorporate subsequent events in the same suit. The nature of additional reliefs sought for are not found

unjustified. Allegation of dispossession during the continuance of the suit cannot be said to be a cause of action which cannot be agitated in the same

suit to avoid multiplicity of suit between the same parties.

11. Moreover, when plaintiff was permitted to file a separate suit for a new cause of action, the question arise as to why plaintiff can be prevented to

incorporate such amendment when there is an allegation that he was apprehending dispossession and prayed for injunction. Therefore, during the

pendency of the suit, when it is alleged that by violating the order of injunction, the plaintiff was dispossessed, in the opinion of this Court, the petitioner

has a right to ventilate his grievances by filing a new suit and also by amendment of the plaint. Merely because an amendment is allowed would not

mean that the learned trial court had decided those issues. By allowing such amendment, the learned trial court is only permitting the pleadings to be

brought on record, which is subjected to be proved in course of trial. Therefore, this Court does not find any infirmity in filing of an application for

amendment by the petitioner.

12. In respect of the cases cited by the learned counsels for the respondent, in the case of Ashutosh Chaturvedi (supra), the issue involved in the said

case was filed for declaration of title and confirmation of possession and for setting aside the Sale Deed in question executed by the respondent. The

suit was filed in the year 1990 and on 11.06.2003, an application was moved

before the learned trial court for amendment of the plaint, claiming preferential rights in respect of the suit property on the ground that the plaintiff was a co-sharer of the land. Under these facts, the Honâ??ble Apex Court has recorded a finding that under Article 227 and the Limitation Act, a limitation of one year was provided and since such right was invoked after 13 years, the amendment was barred. Hence, the Apex Court did not exercise its discretion to allow the said amendment. Accordingly, the said citation has no relevance in the present case.

13. In the case of Alkapuri Co-operative Housing Society Ltd. (supra), the plaintiff had filed a suit against the Municipality with a prayer for temporary injunction against the society for causing interference and possession in respect of the suit land. The suit was filed in the year 1985 and on 09.04.2003, the legal representatives of the plaintiff sought to implead the Municipal Corporation by amending the plaint. The prayer for amendment was dismissed by the learned trial court and the Honâ??ble Supreme court had allowed the said amendment. While allowing the appeal, by rejecting the prayer for amendment, it was held that by amendment, the plaintiff was seeking to alter basic structure of the suit which was held to be impermissible. Therefore, the fact of the said case is distinguished from the present case in hand. However, it could be relevant to quote the relevant paragraph-18 thereof:

â??18. There cannot be any doubt or dispute that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution of the suit. We have noticed hereinbefore that the plaintiff-respondents in their application for amendment of the plaint themselves accepted the fact that the appellant herein not only had filed a suit prior in point of time to the suit filed by the deceased respondent but had also obtained an injunction as a result whereof they did not obtain effective possession of the suit land. If that be so, in our opinion, the plaintiff-respondents in effect and substance are seeking to alter the basic structure of the suit which in the case of Sampath Kumar (supra) itself has been held to be impermissible.

14. Therefore, instead of helping the case of the respondent, the said observation of the Honâ??ble Apex Court squarely comes to the aid of the

petitioner in the present case. Because, the Honâ??ble Apex Court had laid down that an application for amendment, which was filed during the pendency of the suit, stands at a different footing than the one which had arisen prior to the institution of the suit. Therefore, in the present case in hand when the allegation is about dispossession of the petitioner during the pendency of the suit, as per the ratio laid down by the Honâ??ble Supreme Court, the amendment as prayed for by the petitioner deserves to be allowed and by disallowing such a prayer, the learned trial court is found to have committed jurisdictional error.

15. In the case of State of M.P. (supra), the said suit is an original suit under Article 131 before the Honâ??ble Apex Court being a dispute between the State and Union where statute notification was challenged by the State of M.P. as arbitrary, unjust and unfair. During the pendency of the suit, the plaintiff sought for amendment of the plaint to the effect that certain Sections of the relevant Act were unconstitutional. Under the said circumstance, the Honâ??ble Apex Court had refused amendment on the ground that such amendment if allowed, then the suit has become infructuous and it could change the fundamental character of the suit. Moreover, the Honâ??ble Apex Court was of the view that the State did not challenge the vires of the relevant Section under Article 32 of the Constitution of India. Under such circumstance, the amendment was refused. Therefore, even the ratio of the said case is not applicable in the present facts of the case in hand.

16. In that view of the matter, this Court is of the unhesitant opinion that the learned trial court had committed jurisdictional error by refusing amendment in respect of the present case in hand on the ground that a new case or a new cause of action cannot be allowed by amendment and that the petitioner could not be allowed to convert his original claim into one of different character as it would cause injury and prejudice to the opposite party. In the opinion of this Court, when the petitioner had alleged that he was dispossessed during the pendency of the suit by way of violation of the order of injunction, the courts are not required to take a technical view that such amendment may change the nature of the original claim, because under such circumstances, the only remedy the plaintiff had upon being dispossessed from the suit land was to cause amendment of the plaint, for events which had happened subsequent to filing of the suit.

17. In view of the discussion above, this revision stands allowed. Therefore, the order dated 30.07.2013 passed by the learned Munsiff, Charaideo,

Sonari in Misc. (J) Case No.11/2013 is hereby set aside and quashed. Consequently, the prayer for amendment of the plaint as made in Misc.(J) Case

No.11/2013 also stands allowed. The learned trial court shall pass consequent order(s) permitting the amendment as prayed for to be brought on

record for any such order as the said learned court may deem fit and appropriate.

18. The parties are left to bear their own costs. Both the parties, who are duly represented through their learned counsels, shall appear before the

learned trial Court, without any further notice of appearance, on 04.04.2018 and by producing a certified copy of this order shall seek further

instruction from the said learned court below.