

(2015) 07 CAL CK 0095
In the Calcutta High Court
Case No : CO 3406 of 2013

Mona Grewal

APPELLANT

Vs

Karan Singh Grewal and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Constitution of India, 1950 — Article 227

Citation : (2015) 3 CALLT 498 : (2015) 4 CHN 103

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : Dhiraj Trivedi, Amit Sharma, Pankaj Kedia, Partha Pratim Dutt and S. Trivedi, for the Appellant; Sabyasachi Bhattacharya and Siddhartha Lahiri, Advocates for the Respondent

Judgement

Subrata Talukdar, J—In this application under Article 227 of the Constitution of India the petitioner-plaintiff-wife challenges the Order No. 16 dated 6th September, 2013 passed by the Ld. 2nd Civil Court (Junior Division) at Alipore in Title Suit No. 169 of 2012 thereby rejecting the application for amendment of plaint filed by the petitioner-plaintiff under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure.

2. The opposite parties (for short OPs) in this application are the defendants in the suit. The OP1 is the husband of the petitioner-plaintiff and the OPs 3 and 4 are the mother and brother respectively of the OP1. By the Order impugned No. 16 dated 6th September, 2013 the Ld. Trial Court was pleased to, inter alia, hold that in her amendment application the petitioner-plaintiff has tried to bring on record the several criminal actions brought by the parties against each other in different criminal Courts. The Ld. Trial Court was also pleased to notice that in view of the several criminal actions brought in Courts and other fora between the petitioner-plaintiff and the OPs, it has become necessary to bring on record the changed situation for the purpose of proper adjudication of the matter.

3. The OPs-defendants filed written objection to the application for amendment. Noticing that the original prayers of the petitioner-plaintiff in the suit were respectively for a decree of declaration that the plaintiff and her men, agents and/or servants be entitled to use the said flat; a decree for mandatory injunction; and a decree for permanent injunction against the defendants in respect of the said flat, the Ld. Trial Court further noticed that the suit being civil in nature in contradistinction to the amendment proposed by the petitioner-plaintiff which were lengthy and pertained to criminal proceedings.

4. On perusal of the schedule of the proposed amendment the Ld. Trial Court took the view that such amendment is not at all necessary for the proper and effective adjudication of the suit. The Ld. Trial Court was of the further view that "the proposed amendment is altogether unnecessary, irrelevant and extraneous to the context of the present civil suit". In the view of the Ld. Trial Court the proposed amendment is not at all necessary for the purpose of determining the real question in controversy between the parties. Such a lengthy amendment is redundant and will have the effect of protracting the litigation and final adjudication of the application for temporary injunction as well as the suit as a whole.

5. Further noticing the order of this Hon"ble Court in CO 1912 of 2013 directing the Ld. Trial Court to hear out the application for temporary injunction within a prescribed period, the Ld. Trial Court on a discussion of the principles pertaining to amendment laid down by the Hon"ble Apex Court in *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others*, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 , concluded that the amendment application is liable to be rejected.

6. Sri Dhiraj Trivedi, Ld. Counsel appearing for the petitioner-plaintiff-wife submits that the suit essentially pertains to a flat being Flat No. 1B, measuring about 2431 sq. ft. on the first floor, Block "B" with covered car parking spaces No. B-16 and B-20 in the basement of Block "B" at premises No. 29, Ballygunge Park, Navin Apartments, Flat No. 1B, P.S.-Karaya, Kolkata- 700019 (for short the said flat).

7. Sri Trivedi, Ld. Counsel takes this Court to the plaint and points out that the pleadings trace their basis to the estranged matrimonial relationship between the petitioner-plaintiff and the OP1. Ld. Counsel for the petitioner also points out that from paragraph 18 of the plaint it will be found that the said flat was gifted to the petitioner-plaintiff by her father. There is reference to documents addressed by the father of the petitioner-plaintiff to the owners' association of the said flat and the maintenance bills as well as other related expenses connected to the said flat which were in the name of the petitioner-plaintiff.

8. Sri Trivedi further argues that it is also pleaded in the plaint that the father of the petitioner-plaintiff faced financial stringency on account of the mortgage of the said flat and therefore had approached the OPs for assistance in paying back

the mortgage amount. The OPs assisted the father of the petitioner-plaintiff in paying back part of the mortgage amount on condition that the said flat shall be registered in the joint name of the OPs and thereafter on the basis of mutual and amicable family understanding, the shares of the OPs shall be transferred in favour of the petitioner-plaintiff.

9. Sri Trivedi further submits that OPs reneged on their assurance and in view of the escalating domestic discord between the petitioner-plaintiff and the OP1, she was driven out with her two children. Sri Trivedi highlights the fact that from paragraph 17 of the plaint the rapidly escalating domestic discord and ill-treatment faced by the petitioner-plaintiff at the hands of the OP1 have been pleaded and from paragraph 18 to the end of the plaint at paragraph 35 the petitioner-plaintiff has continuously pleaded about her right to reside in the said flat, both in the light of the fact that the father of the petitioner-plaintiff originally intended to hand over the said flat to her and also in the light of her legal right to stay in a shared household.

10. Ld. Counsel for the petitioner next submits that in the meantime the petitioner was compelled to approach the criminal courts under the Protection of Women from Domestic Violence Act, 2005 (for short the 2005 Act). The Ld. Magistrate exercising jurisdiction under the 2005 Act granted both maintenance and the right to reside in a shared household to the petitioner-plaintiff in respect of her application. Aggrieved by the order of the Ld. Magistrate the OPs filed a criminal appeal and the parties were directed to maintain status-quo. The order of maintenance was continued in a modified form.

11. Sri Trivedi points out that in the light of the several orders passed in respect of the actions brought under the 2005 Act it became necessary to inform the Ld. Trial Court in the suit of the subsequent developments. It also became necessary to highlight the fact that taking advantage of the absence of the petitioner from the said flat the OPs-defendants tried to induct a licensee into the said flat. Such induction was intended to frustrate the very purpose of the suit filed by the petitioner-plaintiff qua the said flat.

12. Sri Trivedi, Ld. Counsel submits that it became necessary for the petitioner-plaintiff to take steps in terms of the orders passed under the 2005 Act and in view of the induction of a third party licensee, to protect her possession in respect of the said flat. In view of the changed situation it also became necessary to alter the prayers for permanent injunction in support of the primary declaratory relief sought for by the petitioner-plaintiff. Such subsequent events would, of necessity, have to be considered by the Ld. Trial Court at the time of final adjudication of the suit and therefore could be brought on record only by way of an amendment. In support of his submissions Sri Trivedi relies upon the following decisions:--

Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, AIR 2006 SC 1647 : (2006) 3 JT 607 : (2006) 3 SCALE 312 : (2006) 4 SCC 385 : (2006)

AIRSCW 1538 : (2006) 3 Supreme 507 ;

Sampath Kumar Vs. Ayyakannu and Another, AIR 2002 SC 3369 : (2002) 7 JT 182 : (2002) 6 SCALE 544 : (2002) 7 SCC 559 : (2002) 2 SCR 397 Supp ;

2010 (4) CHN (Cal) 252;

Puran Ram Vs. Bhaguram and Another, AIR 2008 SC 1960 : (2008) 2 CTC 224 : (2008) 4 JT 37 : (2008) 4 SCALE 40 : (2008) 4 SCC 102 : (2008) AIRSCW 2265 : (2008) 2 Supreme 166 ;

2015 (1) WBLR (Cal) 996;

2015 (1) WBLR (Cal) 482 and

2014 (14) SCC 762 (Head note B, para 20)."

13. Per contra, Sri Sabyasachi Bhattacharya, Ld. Senior Counsel appearing for the OPs submits that the nature of the proposed amendment is completely different from the story pleaded in the plaint. Ld. Senior Counsel argues that the petitioner-plaintiff is now seeking to take advantage of the criminal proceedings under the 2005 Act and claiming possession in respect of the said flat, which was absent in the original plaint.

14. Taking this Court to the several pleadings on record particularly the order as recorded by the Ld. Magistrate, Sri Bhattacharya argues that the petitioner claims to have been residing in her matrimonial home at two places namely 19, Ballygunge Circular Road, Sukshiti Building, Flat No. 1B, P.S. Ballugunge, Kolkata- 700019 and, secondly 6A, Clarke Street, P.O. & P.S. Ballygunge, Kolkata- 700026. In none of the two cases it can be perceived that the said flat was in issue before the Ld. Magistrate in the proceedings under the 2005 Act.

15. Ld. Senior Counsel, Sri Bhattacharya submits that in her proposed amendment the petitioner-plaintiff has completely changed her stand and claims to be residing in the said flat and therefore prays for an order of permanent injunction restraining the OPs-defendants from in any manner disturbing or interfering or obstructing her peaceful possession and enjoyment of the said flat. Sri Bhattacharya submits that such claim to present possession of the said flat and the nature of permanent injunction asked for in the amendment do not at all feature in the original plaint. The identity of the premises covered under the plaint and in respect of the proceedings under the 2005 Act cannot be confused.

16. In support of his submissions Sri Bhattacharya relies upon the following decisions:--

Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, AIR 2007 SC 1663 : (2007) 3 CTC 400 : (2007) 5 JT 476 : (2007) 5 SCALE 831 : (2007) 5 SCC 602 : (2007) 6 SCR 306 : (2007) AIRSCW 2545 : (2007) 3 Supreme 582 ;

Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai (deceased)

Thr. LRs., AIR 2009 SC 1948 : (2009) 1 SCALE 642 : (2009) 3 SCC 467 : (2009) 1 SCR 157 : (2009) 2 UJ 595 : (2009) AIRSCW 1572 ; and

Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 ."

17. Having heard the parties and considering the materials on record this Court at the very outset is required to notice the law laid down by the Hon"ble Apex Court in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 in the matter of Revajeetu Builders & Developers v. Narayanaswamy & Sons & Ors. (supra). At paragraph 63 the Hon"ble Apex Court upon considering a number of decisions of both our Courts and overseas has laid down that it will be necessary to take cognizance of certain factors while dealing with an application for amendment:--

"63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

18. Having regard to the law laid down in paragraph 63 of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 (supra) this Court finds that it is imperative to take notice of the fact whether the proposed amendment pertains to the real controversy between the parties. In this regard this Court notices and, such has been discussed earlier in this judgment, that the suit essentially covers the petitioner-plaintiff's declaratory and injunctive reliefs only in respect of the said flat.

19. This Court also notices that the proposed amendment, although citing subsequent developments in the criminal proceedings under the 2005 Act as a prelude, the substratum of the proposed amendment essentially centres on and around the said flat. In *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others*, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 (supra) at paragraph 36 the Hon"ble Apex Court was pleased to discuss the object underlining amendment of pleadings as laid down in a leading English case as follows:--

"36. In the leading English case of *Cropper v. Smith*, the object underlying amendment of pleadings has been laid down by Browen, L.J. in the following words:

"..... it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour of grace. ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right."

(emphasis supplied)

20. This Court is also required to notice the decision of the Hon"ble Apex Court in *Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others*, AIR 2006 SC 1647 : (2006) 3 JT 607 : (2006) 3 SCALE 312 : (2006) 4 SCC 385 : (2006) AIRSCW 1538 : (2006) 3 Supreme 507 and *Sampath Kumar Vs. Ayyakannu and Another*, AIR 2002 SC 3369 : (2002) 7 JT 182 : (2002) 6 SCALE 544 : (2002) 7 SCC 559 : (2002) 2 SCR 397 Supp . In *Sampath Kumar Vs. Ayyakannu and Another*, AIR 2002 SC 3369 : (2002) 7 JT 182 : (2002) 6 SCALE 544 : (2002) 7 SCC 559 : (2002) 2 SCR 397 Supp it has been, inter alia held at paragraph 7 as follows:--

"7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial Court it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment

would curtail multiplicity of legal proceedings."

21. This Court is also not unmindful of the decision reported in 2010 (4) CHN (Cal) 252 (supra) in which an Hon"ble Single Bench was pleased to disallow amendments which were mutually destructive of the pleadings made in the original plaint. The Hon"ble Single Bench held that such mutually destructive pleadings cannot be allowed to be introduced by way of an amendment.

22. At the same time this Court is required to notice the decision reported in The General Manager, Southern Railway, Madras and Another Vs. T.M. Paramasivam, AIR 1977 SC 355 : (1977) LabIC 171 : (1976) 3 SCC 430 : (1976) 3 SCR 1085 : (1976) 8 UJ 484 on the point that in an action proposing amendment the Court is required to notice the difference between substituted pleadings and pleadings which alter or displace the original pleadings.

23. Having noticed the facts on record and the law as understood this Court is of the considered view that the original plaint related to reliefs only in respect of the said flat. The proposed amendment arising out of the subsequent events also relates to the claim of the petitioner-plaintiff in respect of the said flat. The seed of the claim of the petitioner-plaintiff to the said flat have been already pleaded in the original plaint. The circumstances have only changed in view of the subsequent developments.

24. Therefore, this Court is persuaded enough to hold that the real test in issue between the parties in the suit is their respective rights of ownership and possession of the said flat. There is no departure from the real controversy in issue in the proposed amendment since the criminal proceedings had to be lengthily pleaded as a prelude to the substance of the amendment.

25. This Court also notices that at the time of filing the proposed amendment the OPs-defendants were yet to file their written statement.

26. Therefore, this Court is unable to agree with the view taken by the Ld. Trial Court that the proposed amendment is not necessary for determining the real question in controversy. To the mind of this Court the sheer length of the proposed amendment persuaded the Ld. Trial Court to take the view that the proposed amendment would unnecessarily protract the litigation. The Ld. Trial Court was at the same time faced with an order from the Hon"ble High Court to dispose of the application for temporary injunction within a prescribed period.

27. In the above circumstances this Court does not find that the proposed amendment fails to satisfy the tests laid down in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 (supra) . At the same time this Court is required to notice that the petitioner-plaintiff was entitled to plead her amended injunctive reliefs in support of her main declaratory relief in the suit.

28. Accordingly the order impugned No. 16 dated 6th September, 2013 passed by the Ld. 2nd Civil Court, Alipore in Title Suit No. 169 of 2012 stands set aside.

The Ld. Trial Court is directed to proceed further from the stage of accepting the amendment.

29. CO 3406 of 2013 stands allowed.

30. There will be, however, no order as to costs.

31. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.