

(1948) 02 CAL CK 0032
In the Calcutta High Court
Case No : Civil Revision Case No. 1622 of 1947

Nanilal Dey and Others

APPELLANT

Vs

Sm. Kanaklata Dasi and Another

RESPONDENT

Date of Decision : 27-02-1948

Acts Referred:

Citation : (1948) 02 CAL CK 0032

Judgement

Sen, J.—This Rule was obtained by the Plaintiff-Petitioners against an order passed by the Munsif, 2nd Court Serampur refusing the Plaintiffs' prayer for the amendment of their plaint by adding a claim for relief in the form of a mandatory injunction directing the Defendants to pull down certain masonry constructions built upon the land. The Plaintiffs' suit was for a declaration of their title to the land and for a declaration that the Defendants were ticca tenants with no right to construct any structure on the land. The allegation in the plaint originally was that they had begun to construct structures and the Plaintiffs claimed that they should be enjoined from making any further construction. An application for interim injunction was applied for and refused. The Plaintiffs then applied for the amendment of their plaint stating that the constructions had proceeded further than what was stated in their plaint and asked for an additional relief in the way of a mandatory injunction which would grant them the relief of having the structures directed to be pulled down. This application was opposed and the learned Munsif refused it. Against this order of refusal the present Rule was obtained.

2. I wish to say at the outset that I express no opinion whatsoever upon the merits of the case or upon the rights of the parties in the suit with respect to its subject-matter. Those are questions which will be decided in the suit.

3. The only question for consideration is whether the Plaintiffs at this stage should be allowed to amend their plaint in the way prayed for. It is said that this amendment will change the nature of the suit. I entirely fail to see the force of this contention. This relief arises naturally upon the allegations made in the plaint

and in my opinion no alteration in the nature of the suit would be involved if this amendment were allowed and no question of limitation also arises.

4. The point argued most strenuously in this Court was that this Court acting under its revisional jurisdiction had no power to revise the order of the learned Munsif under sec. 115 of the CPC as this was an interlocutory order the correctness of which could be challenged in an appeal against the decree passed in the suit. In support of this proposition I was referred to the decision in the case of Chandi Roy v. Kripal Roy (1911) C. W. N. 623 . There are observations in the case which certainly support this view and there are a string of other cases which indicate that this Court has power to interfere with such orders even though the order may be challenged in an appeal from the final decree. I shall mention these cases presently. What I would like to say at this stage is that I am doubtful whether this order could be challenged in an appeal from a final decree if a decree were passed in favour of the Plaintiffs on the plaint as it stands unamended. A party may appeal from a decree if he is prejudicially affected by the decree complained of. [See the case of Srinath Das v. Probodh Chunder Das 11 C. L. J. (sic) 1910]. If the plaint is not allowed to be amended and a decree is passed in favour of the Plaintiffs upon the plaint as it stands it is extremely doubtful if it can be said that the decree prejudicially affects the Plaintiffs. This is one ground which inclines me to interfere.

5. Again I am of the opinion that amendments should be freely allowed unless they change the nature of the suit or unless the allowing of such amendments would interfere with rights which have already accrued to the party who may be adversely affected by the amendments. It is a well-known principle that amendments are allowed at all stages of the suit and the Judicial Committee have allowed amendments in appeals taken from this Court to it at that late stage. As has been said more than once this relief should be granted freely unless the granting of such relief is prohibited by some principle of equity, justice or law; the party aggrieved by the granting of an amendment can well be compensated if he is allowed costs. This is the view which has been taken both by this Court and by the Courts in England.

6. I shall now cite certain cases in support of the view I have taken. In the case of Salam Chand Kannyrem v. Bhagwan Das Chilhama I. L. R. (sic) Cal. 767 1916 there was a difference of opinion between Mr. Justice Cuming and Mr. Justice Page regarding the principle on which this Court could interfere with interlocutory orders in the exercise of its powers under sec. 115 of the Code of Civil Procedure. Mr. Justice Page held the view that this Court had jurisdiction to revise interlocutory orders passed by subordinate Courts from which no appeal lies to the High Court and he relied upon the well-known principle *Boni Judicis est Ampliare jurisdictionem*. I am inclined to follow the view of Mr. Justice Page in this matter and I am supported in my opinion by the following cases, *Sm. Sarajubala Debi v. Mohini Mohan Ghosh* 28 C. W. N. 991 (1928), *Lokenath Mukherjee v. Abani Nath Mukherji* 37 C. W. N. 1098 (1988) and *Indubala Dassi v.*

Lakshmi Narayan Ganguly 38 C. W. N. 1146 (1984). I am unwilling to restrict or fetter the power which this Court may exercise under sec. 115 of the CPC by laying down general principles which may be found to be unsound on other facts. On the facts of this case I am of the opinion that the amendment should be allowed and I accordingly set aside the order of the learned Munsif and allow the Plaintiffs to amend their plaint as prayed for. The Defendants shall be allowed to make any amendment in their written statement consequential to the amendment which is allowed to be made by the Plaintiffs. The Defendants shall get the costs which may be incurred by reason of making this amendment and the Plaintiffs shall make their amendment at their own costs. The costs hitherto incurred by the Plaintiffs in the Courts below will be borne by the Plaintiffs. The Plaintiffs shall also pay the costs of this rule--hearing-fee being assessed at two gold mohurs.