
(2012) 02 CAL CK 0050
In the Calcutta High Court
Case No : C.O. No. 1674 of 2011

Nur Islam Mondal

APPELLANT

Vs

Kasem Ali Mondal and Others

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Citation : (2012) 5 CHN 38

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Tapabrata Chakraborty and Mr. Kumaresh Dalal, for the Appellant;

Judgement

Soumen Sen, J.—The petitioner is aggrieved by the order dated 17th January, 2011 by which the plaintiff's application for amendment of the plaint was rejected on the ground that the plaintiff has not given any explanation for introducing Paragraph 5(a) to the original plaint.

2. The learned Court held that the said amendment would not be necessary for the purpose of determining the real questions in controversy between the parties.

3. The plaintiff filed a suit for eviction and recovery of khas possession. According to the plaintiff, the opposite parties are licensees and they were in permissive possession in the schedule property of the plaint which has since been revoked, accordingly, continuation of their possession in the suit property after revocation of the licence is illegal.

4. Mr. Tapabrata Chakraborty, learned Counsel appearing on behalf of the petitioner submits that for the purpose of showing that the opposite parties have committed a fraud such amendment is necessary.

5. The case of the plaintiff in the plaint is that the father of the plaintiff was in possession of the suit plot along with many other non-suit plots along with other co-owners.

6. During R.S. operation, the father of the plaintiff was not alive and his only son Nur Islam Mondal i.e. the plaintiff acquired the right title interest over the demised property. Before and/or during such settlement such plots of land including the suit plot were orally amicably partitioned amongst all the co-owners and the said oral amicable partition would be reflected in the R.S. R.O.R in Khatian No.3. The plaintiff, thus, claims that the entire suit plot of land in view of such amicable oral partition was in possession of the plaintiff and that was recorded in remarks column, i.e., 23 column in the R.S. R.O.R. in the name of the plaintiff.

7. The defendants/opposite parties are the permissive possessors of the suit plot of land under the plaintiff. In the year 1998, the defendants approached the plaintiff to allow them to cultivate the suit land with an assurance that they would vacate the suit land as and when the plaintiff would require them to do so. It was on the basis of such request permissive possession was given to the opposite parties to cultivate the suit land. The defendants, however, surreptitiously and fraudulently mutated their names in the L.R. R.O.R. by deleting the name of the plaintiff in respect of the suit land and they were claiming the suit land as their own land. It was after becoming aware of the said fact that the plaintiff on 8th October, 2007 objected to such mutation and requested the opposite parties to deliver the vacant and peaceful possession of the suit plot of land. On a further enquiry being made, the plaintiff could ascertain that the opposite parties mutated their names fraudulently in the Record of Rights by misleading the office of the B.L. and L.R.O. In view thereof, the plaintiff revoked the licence and filed the instant suit on 20th September, 2008.

8. On 10th May, 2010, the plaintiff filed a petition under Order 6 Rule 17 read with Section 151 of the CPC by which the plaintiff wants to bring on record certain facts relating to non-suit plot of land. The allegations are that the defendants also fraudulently mutated their names in respect of some non-suit plot of land. The plaintiff claims that such non-suit plot of land had been sold by the plaintiff in favour of one Didar Box Mondal and in such transaction the opposite parties were made as confirming parties.

9. Mr. Tapabrata Chakraborty submits that these averments are required for the purpose of determining the real question in controversy between the parties.

10. This Court is, however, unable to appreciate such argument.

11. The proposed amendment refers to certain non-suit plots and, in my view, to bring on record events relating to non-suit plot of land are wholly unnecessary for the purpose of determining the real question in controversy between the parties. In fact, no relief has been claimed in the plaint with regard to the non-suit plot of land which the plaintiff claims to have sold with the consent of the opposite parties. Mr. Chakraborty has relied upon the following decisions:-

1) 2001 (2) SCC 472 (Ragu Thilak D. John Vs. S. Rayappan & Ors.);

2) Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D) and Others,

3) 2007 (2) CLJ (Cal) (Sk. Abul Kalam & Ors. Vs. Umapada Maity & Ors.);

12. In the decision reported in 2001 (2) SCC 472 (Ragu Thilak D. John Vs. S. Rayappan & Ors.) the plea was taken that the relief sought by way of amendment was barred by time which is found to be arguable in the facts and circumstances of the case. Hence, the Hon'ble Supreme Court interfered.

13. In the decision reported in Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D) and Others, it appears that the plaintiff had filed a suit for declaration of joint title. The question involved was whether the plaintiff had established his title to the suit property. The plaintiff belatedly attempted to amend the plaint to make his claim more precise so as to enable the Court to adjudicate upon it more satisfactorily. The Trial Court did not allow the amendment. The Appellate Court also upheld the order of the Trial Court. In the said reported decision, the plaintiff by way of amendment tried to "pinpoint the disputed property with better particulars". The plaintiff argued that by the amendment that they wanted to supply better particulars which, according to them, were needed for proper adjudication of the matters in controversy. It appears that the ground for refusal to allow amendment was the belated attempts made by the plaintiff to amend the plaint which previously was once amended. The reason for setting aside the order of the Trial Court as well as the Appellate Court are in paragraphs 10,11 and 12 of the said report which are reproduced herein below-

10. The suit is for recovery of possession on the strength of title. Obviously, the burden is on the plaintiff to establish that title. No doubt in appreciating the case of title set up by the plaintiff, the Court is also entitled to consider the rival title set up by the defendants. But the weakness of the defence or the failure of the defendants to establish the title set up by them, would not enable the plaintiff to a decree. There cannot be any demur to these propositions.

11. The question, therefore, is whether the plaintiff had established his title to the suit property. The plaintiff, though somewhat belatedly, attempted to amend the plaint to make his claim more precise so as to enable the Court to adjudicate upon it more satisfactorily. We see force in the contention of learned senior counsel for the appellant that the Trial Court ought to have allowed the amendment so as to enable it to decide the dispute in a more satisfactory manner. The Appellate Court, it appears to us, was also not justified in harping upon the so-called absence of bona fides on the part of the plaintiff in approaching the Court. What was called for, was an independent appraisal of the various documents produced by the plaintiff in the light of the pleadings and the oral evidence available to come to a conclusion whether the plaintiff had established his title or not. In that context, the Appellate Court ought to have seen that the Trial Court was in error in refusing the amendment of the plaint

which would have enabled the Court to render a decision in a more satisfactory manner.

12. Similarly, when there is an ancient document of 1875 that is being relied upon in support of the claim of the plaintiff, the Appellate Court ought to have granted an opportunity to the plaintiff to prove that document or to lay the foundation for adducing secondary evidence for its acceptance in evidence by production of a certified copy of the lease deed. By refusing to look into the document of title relied upon by the plaintiff on the ground that no foundation has been laid for adducing secondary evidence by production of a certified copy of the lease deed, the Trial Court and the Appellate Court have adopted a course that has resulted in injustice to the parties. The Trial Court ought to have, in the circumstances, called for evidence regarding the availability of the original of the 1875 lease deed and given the plaintiff an opportunity to lay the foundation for accepting in evidence a certified copy of that document. After all, the whole case depends upon whether the suit property is included in the 1875 lease deed and if it is included, whether the plaintiff could get a decree for recovery of possession of the portion in the possession of defendants 1 to 9.

14. In the instant case, the proposed amendment is not connected with the original cause of action and the whole case of the plaintiff depends upon as it appears from the plaint on an amicable oral partition which needs to be proved at the trial.

15. The plaint must state that fact and not evidence. Once the foundational facts are pleaded the same can always be proved by leading evidence. In so far as the case of *Sk. Abul Kalam* (supra) is concerned it cannot be doubted that application for amendment may be allowed even after the conclusion of recording of evidence and at the stage of hearing of the argument if such amendment is necessary for complete adjudication of the dispute in the suit. Although the stage at which it is attempted to be made is a factor to be taken into consideration but the Court would always lean in favour of amendment, if the same is necessary for complete adjudication of the dispute in the suit filed by the plaintiff.

16. Mr. Chakraborty on the basis of the said decision would submit that a liberal view should be adopted in considering a prayer for amendment. The learned Counsel has relied upon Paragraphs 28, 29, 31 and 36 of the said decision.

17. In the said reported decision it appears that in the original plaint, the plaintiff proceeded on the basis as if they were in possession of the suit property right from the date of purchase. In the proposed amendment, the plaintiffs wanted to introduce that during the pendency of the suit, the plaintiffs were dispossessed forcibly by the defendants from "A" and "B" Schedule Property. Accordingly, the plaintiff prayed recovery of possession from the defendants in respect of "A" and "B" Schedule Property. The plaintiff initially did not claim any right, title and interest in respect of the suit property but in view of the changed circumstances, the plaintiff wanted to incorporate a prayer for declaration of their right, title and

interest in the suit property by such proposed amendment.

18. The learned Single Judge considering the scope of such amendment and after considering the materials on record held as follows:-

31. It is settled law that the Court should be very much liberal so far as the prayer for amendment is concerned, but at the same time there are certain yardsticks which the Court cannot ignore while considering the prayer for amendment of the parties.

32. It is equally settled by the Hon'ble Supreme Court in the case of Heeralal v. Kalyan Mal that admission made by a party either in their pleadings, cannot be allowed to be withdrawn by way of amendment. But explaining of admission by a party is not permissible. Withdrawal of admission means deletion of statement relating to such admission and/or substitution of one set of fact in the place of the facts already stated in the pleadings or in the evidence.

33. Here, the Court finds that the plaintiffs have not made any admission regarding the defendants' possession in the suit property in their pleadings. Admission regarding the defendants' possession in the suit property since the date of their purchase, however, can be found in the evidence of the plaintiffs where the plaintiffs have stated that the defendant Nos. 1 to 9 have been in possession since the date of their purchase.

34. This Court also holds that the admission which have already been made by the plaintiffs in their evidences cannot be deemed to have been withdrawn, if such amendment is allowed. The admission made by the plaintiffs in their evidences will remain intact, even if, such amendment is allowed.

35. As such, submission of Mr. Adhikary that the admission will be followed to be withdrawn, if such amendment is allowed, cannot be accepted.

36. In the proposed amendment, the plaintiffs want to incorporate that they were dispossessed during the pendency of the suit. A dispute as to whether the plaintiffs were in fact dispossessed from the suit premises during the pendency of the suit or they were out of possession since 1958, cannot be a matter for consideration at the time of consideration of the plaintiffs' application for amendment of plaint. Such a consideration may be relevant after the amendment of plaint is effected.

37. It is also settled law that while considering the prayer for amendment, the Court cannot consider the point of limitation. An objection regarding the bar of limitation of the plaintiffs' claim may be a consideration in the suit provided the amendment is allowed. Such principle was laid down by the Hon'ble Supreme Court in the case of Raghu Thilak D. Jhon Vs. S. Rayappan & Ors. reported in 2001 (2) SCC 472.

19. The purpose of amendment under Order 6 Rule 17 of the CPC would be "for the purpose of determining the real questions in controversy between the

parties", it would mean determination on the merits of the real point at issue and for the purpose, such amendment would be necessary. It has been held that Nrisingh Prosad Paul Vs. Steel Products Ltd., that an immaterial and useless amendment should not be permitted by the Court. In my view, the amendment sought to be introduced, is immaterial at this stage.

20. The learned Single Judge has also observed that the question of limitation cannot be considered at that stage and the amendment is necessary for complete adjudication of the dispute in the suit. The said ratio cannot be made applicable to the instant case.

21. It is settled law that a decision is only an authority for a proposition it decides Sarva Shramik Sanghatana (K.V), Mumbai Vs. State of Maharashtra and Others, One can fruitfully refer to the observations made in Quinn's case reported in 1901 AC 495 which was endorsed by the Hon'ble Supreme Court in Sarva Shramik Sanghatana (K.V), Mumbai Vs. State of Maharashtra and Others, in paragraph 14 which is reproduced hereinbelow:

14. On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem:

Before discussion Allen V. Flood and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before - that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

22. It has been held in Kalidas Roy and Others Vs. University of Calcutta and Others, that each case is an authority for particular facts arising therein and cannot govern a different set of facts.

23. In view of the nature of the amendment sought to be introduced, it cannot be said that such amendment is necessary at this stage for the purpose of determining real question in controversy between the parties.

24. In view thereof, the revisional application fails, however, there shall be no order as to costs.

25. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertakings.