
(2003) 06 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 2425 of 2002

Sencose Food Products Private Limited APPELLANT
Vs
Raj Kumar Sen and Others RESPONDENT

Date of Decision : 10-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151

Citation : (2004) 1 CALLT 79 : 108 CWN 109

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Sabyashi Bhattacharya, Dipnarayan Mitra and Subhojit Roy, for the Appellant; Udayan Dutta, for Opposite Party No. 1 and Purnasish Gupta, for Opposite Party Nos. 2 to 6, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mukherjee, J.—This is an application under Article 227 of the Constitution of India against order No. 96 dated September 10, 2002 passed by the learned Civil Judge (Junior Division), First Court at Sealdah in Title Suit No. 587 of 1982. By the order impugned the learned Civil Judge rejected an application filed by the defendant No. 6 u/s 151 of the CPC for its transposition as the plaintiff in the said Title Suit No. 587 of 1982.

2. The opposite party No. 1 in this revisional application, namely, Rajkumar Sen, was the owner of the premises No. 237M, Maniktala Main Road, (presently known as Satin Sen Sarani), Police Station: Narkeldanga, Calcutta-700 054.

3. Promodh Bhusan Chatterjee, since deceased, the predecessor-in-interest of the defendants, the opposite party Nos. 2 to 6 in this revisional application, was inducted as a lessee in respect of the suit premises for a period of 21 (twenty one) years commencing from October 1, 1961 and expiring with September 30, 1982 under a registered deed of lease dated September 27, 1961.

4. The plaintiff, the opposite party No. 1 in this revisional application, instituted

the present suit against the heirs and legal representatives of the said Promodh Bhusan Chatterjee for recovery of khas possession and mesne profits in respect of the suit property on the expiry of the lease.

5. By a registered deed of sale the original plaintiff, namely, Rajkumar Sen, conveyed the said premises No. 237M, Maniktala Main Road, Calcutta-700 054 in favour of M/s. Sencose Food Products Private Limited, the defendant No. 6.

6. The said Rajkumar Sen has been proceeding with the said suit and did not inform the Court about such transfer by him. However, on September 3, 1993 the defendants filed an application under Order 1, Rule 10 and under Order 22, Rule 10 read with Section 151 of the CPC praying for addition of M/s. Sencose Food Products Private Limited as a party-defendant in the said suit. The learned trial Judge by order dated April 11, 2000 allowed the said prayer of the defendants and directed addition of the purchaser, the petitioner in this revisional application, as defendant No. 6 in the said suit.

7. On August 25, 2000 the purchaser, who was impleaded as defendant No. 6 in the said suit, applied for its transposition as the plaintiff on the allegation that by a registered deed of conveyance it has purchased the suit premises from the original plaintiff and presently the original plaintiff has no subsisting interest over the suit property. It was asserted that the said purchaser has been entitled to proceed with the suit. The learned Civil Judge by the order impugned, however, rejected the said application for transposition and fixed December 17, 2000 for filing written statement by added defendant. The learned Civil Judge held as this was not a suit for partition there was no scope for transposition of a defendant as the plaintiff.

8. The learned trial Judge, in my view, applied wrong legal tests in considering the prayer for transposition. The Court has the power to order transposition of parties for the purpose of complete adjudication of the questions involved in a suit. A defendant, therefore, can be transposed to the category of the plaintiff and vice versa. The purchaser and the original plaintiff have no conflicting case and the purchaser prayed for its transposition adopting the case made out by the original plaintiff. The learned trial Judge ought to have, in the facts and circumstances of the case, transposed the petitioner in this revisional application as the plaintiff in order to avoid multiplicity of proceeding and to do complete justice.

9. In this connection we can profitably look into the observations made by the Judicial Committee of the Privy Council in the case of Raja Bhupendra Narayan Sinha Bahadur v. Rajeswar Prosad Bhakat reported in 35 CWN 870. The Privy Council observed "the Court clearly had power at any stage of the proceedings to remedy the defect under Order 1, Rule 10 of the CPC by adding the pro forma defendants as co-plaintiffs with the Appellant. Such a course should, in their Lordships' opinion, always be adopted where it is necessary for a complete adjudication upon the questions involved in the suit and to avoid multiplicity of

proceedings."

10. The order impugned is, therefore, set aside. The application for transposition filed by the petitioner in this revisional application is allowed. The petitioner is transposed in the category of the plaintiff.

11. The trial Court is directed to amend the cause title of the plaint suitably and will, thereafter, proceed with the hearing of the suit expeditiously. The suit must, however, be disposed of before the commencement of the long vacation of the Civil Courts for the year 2003.

The revisional application is, thus, allowed without, however, and order as to costs.

The office is directed to communicate a copy of this order to the learned trial Judge by a special messenger at the cost of the petitioner and such cost is to be put in by June 16, 2003 positively.

Xerox certified copy of this order, if applied for, is to be supplied on urgent basis.