

(2011) 01 CAL CK 0051
In the Calcutta High Court
Case No : C.O. No. 1579 of 2010

Sk. Najir Hossain and Another

APPELLANT

Vs

Najrul Khan

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2011) 01 CAL CK 0051

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Prabhat Banerjee and Sajal Kanti Bhattacharya, for the Appellant;
Tapas Midya and Subhodip Majumder, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the Plaintiffs and is directed against the order dated February 15, 2010 passed by the learned Civil Judge (Junior Division), Fourth Court, Howrah in Title Suit No. 204 of 2006.

2. The Plaintiffs instituted a title suit being Title Suit No. 204 of 2006 against the opposite party for a decree of eviction against a licensee, damages and other reliefs. The opposite party is contesting the said suit and the said suit is at the stage of settling date for peremptory hearing. At that time, the Plaintiffs/ Petitioners herein filed an application for amendment of the plaint contending, inter alia, that at the time of filing of the suit, they filed an application for temporary injunction and the learned Trial Judge rejected the prayer for temporary injunction. Thereafter, they preferred a misc. appeal which was dismissed by the learned lower appellate Court. Being inspired by such order, the Defendant/opposite party herein started construction on the suit premises, described in the schedule of the plaint and he has been able to raise construction of one storied building at the suit premises. So, the Plaintiffs have wanted to incorporate that fact and they also prayed for relief of mandatory injunction for demolition of the said premises. That application for amendment of the plaint

was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the Plaintiff instituted the said suit for the reliefs for a decree of eviction of license of the Defendant from the suit room and for hand over khas possession to the Plaintiffs, damages and other reliefs. They have described the suit premises by describing one room having puce brick build wall and tin shed measuring about 13 feet X 12 feet on the old dag No. 1055 and new dag No. 1022 and khatian No. 1552 and Hal Khatian No. 4410 & 4411 of Mouza - Nibra under P.S. Domjur. By the proposed amendment appearing at page No. 31 as annexure P-3, the Plaintiffs have wanted to incorporate paragraph No. 11A which in substance lays down that the Defendant was a licensee under the Plaintiffs in respect of one room and on demolishing the said tin shed structure, the Defendant was constructing a building by engaging a number of mason, workers who worked several hours a day on encroaching upon the Plaintiffs' land measuring about 2 cuttah and 8 chittaks and for that reason they filed an application u/s 144 of the Code of Criminal Procedure against the Defendant but no action was taken by the local authority or police. For that reason, the Plaintiff has also added his relief for a decree of mandatory injunction for demolition and removal of the impugned construction as per schedule to the plaint. For that reason too, the schedule "A" to the plaint should be deleted and in its place the schedule to be inserted is in the following manner:

SCHEDULE

ALL THAT piece and parcel of Bastu Land measuring about 2 Cottahs and 8 Chittaks (a little more or less) together with a one story building with concrete roof thereupon comprised in old Dag No. 1058 (New Dag No. 1072) appertaining to Khatian No. 1552 (New Khatian No. 4410, 4411) of Mouza Bira, P.S. Domjur, District Howrah and butted and bounded as follows:

ON THE NORTH: Rest Land and building of the Plaintiffs in Dag No. 1058.

ON THE SOUTH: Panchayat passage.

ON THE EAST: The Land of the Plaintiffs in Dag No. 1056.

ON THE WEST: The property of Hazi Motaleb Mullick.

4. It is the contention of the Petitioners that the said construction was done without any sanction of the local authority and the same had been done hurriedly and finished on or about February 25, 2009.

5. The Defendant/opposite party vehemently raised strong objection against the prayer for amendment stating, inter alia, that the construction was done by the Defendant on his own purchased property long time back and such fact would appear from the writ proceedings being W.P. No. 11814(W) of 2007 as well as CAN No. 8096 of 2007 in connection with MAT No. 2548 of 2007 which was

disposed of by a Division Bench of this Court comprising Hon"ble Mr. Justice P. K. Ray and Hon"ble Mr. Justice M. M. Sarkar (as His Lordship then was) dismissing the said writ petition. So, the matter had already been adjudicated earlier and the same cannot be the subject matter of amendment in the plaint.

6. The copy of the writ petition being W.P. No. 11814(W) of 2007 and the MAT No. 2548 of 2007 along with Can No. 8-96 of 2007 have been annexed to the application and from such matters, it appears that the alleged construction was dealt with long time back in the said writ petition and the appeal arising there from by this Hon"ble Court and it was held that the writ petition was not maintainable and so the writ petition was dismissed. The appeal was also dismissed. Thus, I find that the contention of the Defendant that the cause of action as stated in the application for proposed amendment is not true. Such matter was agitated long time back by the Petitioners in their writ application. Moreover, the suit was for recovery of possession by evicting a licensee from a room measuring 13 feet X 12 feet but by the proposed amendment, the Plaintiffs have wanted to incorporate the area of the premises to the extent of 2 cottah and 8 chittaks. It is also apparent that the Dag number and Khatian number of the land intended to be included in the schedule are quite different from the earlier ones mentioned in the original plaint. It is the specific case of the Defendant that he had purchased the land over which he had raised construction. Before making any construction, he submitted a plan before the Panchayat Authority but it was not sanctioned within the time limit and so as per Rule 30 of the Panchayat Rules, the deeming clause of being sanctioned shall apply and for that reason the construction shall be treated as if it had been done as per sanctioned plan. There is no dispute about the deeming provision of the Panchayat Rules.

7. Having considered the above facts and circumstances, the proposed amendment cannot be said to be of subsequent events to be incorporated. The proposed amendment if allowed will cause the change of the nature and character of the suit. So, the learned Trial Judge has rightly rejected the application for amendment of the plaint. There is nothing to interfere with the impugned order.

8. Accordingly, the application is dismissed.

9. Considering the circumstances, there will be no order as to costs.

10. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.