

(1984) 06 CAL CK 0003
In the Calcutta High Court
Case No : C. R. No. 3553 of 1982

Sm. Mira Rani Khamaru and Another	Vs	APPELLANT
Sm. Durga Bala Das and Others		RESPONDENT

Date of Decision : 28-06-1984

Acts Referred:

Bengal Money Lenders Act, 1940 — Section 36, 37

Citation : 89 CWN 444

Hon'ble Judges : S.N. Sanyal, J

Bench : Single Bench

Advocate : S.P. Roy Chowdhury and A.K. Rakshit, for the Appellant; Asoke Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Sanyal, J.—This is an application by the defendants 3 and 4 against the order dated August 18, 1982 made by the learned Munsif, 1st Court, Serampore in Title Suit no. 205 of 1977, allowing the opposite party no. 1's application for amendment of the plaint. The opposite party no. 1, Durga Bala Das instituted the suit for declaration of title and permanent injunction and for accounts under sections 36 and 37 of the Bengal Money Lenders Act. Several issues were framed of which Issue no. 1 "Is the suit maintainable in its present form?" was one of them. Dealing with Issue no. 1, the learned Munsif held that the plaintiff had no interest in the suit land and the suit was not maintainable. The learned Munsif dismissed the suit holding that it was not necessary to discuss the other issues as the plaintiff had no title to the suit land. The plaintiff challenged the said decision in Title Appeal no. 158 of 1980. The learned Subordinate Judge by his judgment dated February 14, 1981 allowed the appeal and sent the case back on remand for a fresh trial on the evidence on record and in the light of the observations made in the body of the judgment and in accordance with the fact and law. Thereafter, the plaintiff filed an application praying for amendment of the plaint by incorporating certain statements with regard to her acquisition of

title in the suit property. The said prayer was allowed by the learned Munsif by the impugned order. The defendant nos. 3 and 4 have challenged the said order in the present revision case. Mr. Roy Chowdhury, in support of the Rule, has argued that the trial court had no jurisdiction to grant amendment of the plaint after remand. It has been contended by Mr. Roy Chowdhury that having regard to the order of remand there was no scope for amendment of the plaint which would obviously require introduction of further evidence which the learned Munsif cannot admit in view of the direction contained in the order of remand. Mr. Roy Chowdhury argues that the trial court has no jurisdiction to enlarge the scope of the suit after it was remanded by the learned appellate court. Mr. Roy Chowdhury also submitted that the application was filed at a very late stage. Record was received by the learned Munsif after remand on February 23, 1981. The order dated 7.7.1982 would show that additional issues had already been framed in accordance with the direction of the learned appellate court and arguments were heard in part and the case was adjourned to July 15 1982 for hearing further arguments. The application was filed on this date. Mr. Roy Chowdhury has also referred to the case of. Mt. Muneswari and Others Vs. Sm. Jugal Mohini Dasi, and has argued that as no leave was granted by the learned appellate court while remanding the suit for re-hearing, the learned Munsif was to re-hear the suit as it was remanded and he could not allow amendment of the plaint which would involve introduction of additional evidence.

2. Mr. Banerjee learned Advocate for the opposite party no. 1, has argued that the learned Munsif had jurisdiction to entertain and allow the application for amendment of the plaint as there was no restriction in regard to the same in the order passed by the learned appellate court. Mr. Banerjee has argued that in the original plaint there was no specific pleading about the title though evidence had been led in regard to the same. Mr. Banerjee contends that as the appellate court has directed additional issues in regard to the title of the plaintiff, it was necessary that the averment should be made in respect of" the title of the plaintiff. Otherwise, the question of title cannot be decided. Mr. Banerjee further contends that there was open remand and the appellate court did not debar the trial court from taking evidence.

3. It appears that the learned Munsif dismissed the suit on the ground that it was not maintainable as the plaintiff had no interest in the suit land. As the suit was found not maintainable, the learned Munsif did not decide the other issues framed in the suit and merely observed that it was not necessary for him to discuss these issues as the plaintiff had no title to the suit land. The issues, however, were decided against the plaintiff. The learned appellate court held that the learned Munsif should have decided the other issues and as he had not done so, the suit should be sent back on remand. The learned appellate court observed "The learned Munsif at the re-trial will, along with other evidence already on record, take into consideration entries in the record-of-rights in question and come to a finding regarding the title of the plaintiff in the suit land in accordance with the facts and law." The learned appellate court also directed

the learned Munsif to frame specific issue "Does the plaintiff have any right, title and interest, in the suit land?" The learned appellate court further directed the learned Munsif to decide this issue in the light of the observations made above and he was asked to come to a clear finding on all other issues framed by him. The order of remand will show that the learned Munsif was to consider the evidence already on record and the record-of-rights and he was to come to a decision in the light of the observations made in the judgment and in accordance with fact and law. The records reached the trial court on February 23, 1981. An additional issue viz., "Does the plaintiff have any right, title and interest in the suit land?" was framed as Issue no. 8 on March 8, 1982. Thereafter, arguments were partly heard on July 7, 1982 and the suit was adjourned for further argument on July 15, 1982. The application for amendment was filed on July 15, 1982.

4. In view of the order of remand the trial court has to act within the limit of the said order. The trial court has to carry out the terms of remand and it has- no jurisdiction to enlarge the scope of the hearing. Mr. Banerjee has argued that application for amendment can be filed at any stage. There is no dispute with regard to the said proposition of law as it is well settled that the application for amendment of pleadings can be filed at any stage of proceeding. The question, however, in the present case, is whether the learned Munsif could entertain the application for amendment of the plaint in view of the order of remand which specifically directed him to frame additional issues. The suit was sent back on remand for fresh trial on the evidence on record and in the light of the observations made in the body of the judgment and in accordance with fact and law. An additional issues regarding the plaintiff's title was framed in accordance with the direction of the learned trial court before any application for amendment was made by the plaintiff. The plaintiff could have prayed for leave to amend the plaint before the learned appellate court prior to the appeal being disposed of. In such circumstances, the plaintiff cannot pray for amendment when the suit was pending re-hearing before the learned trial court in accordance with the direction of the learned appellate court. In *Munn eswari's* case referred to above, it has been held that where the High Court in directing a re-hearing of the appeal, does not direct it to be re-heard on the evidence already on record and such further evidence as the parties might adduce but simply directs the appeal to be re-heard in the light of the observations contained in its judgment that direction means that the same appeal that had been heard once is to be heard again and not different kind of appeal With its scope enlarged by the introduction of further evidence and the lower court would be wrong if it allows further evidence to be given, simply because the appeal has been remanded for a re-hearing. The observations were made in regard to the re-hearing of an appeal. But the principles underlying the same would also be applicable when the trial court is directed by the appellate court to hear the suit on the evidence already on record. The learned Munsif had no jurisdiction to enlarge the scope of the suit after remand by way of an amendment of the plaint. In the circumstances, I am

unable to uphold the order of the learned Munsif as there was jurisdictional error on his part and the petitioners have suffered irreparable injury on account of the same. In the result, the Rule is made absolute. The order of the learned Munsif is set aside and the application for amendment of the plaint is dismissed.

There will be no order as to costs. Let the records be sent below forthwith.