
(1999) 06 CAL CK 0010

In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C. O. No. 3169 of 1998

Smt. Amala Das and Others

APPELLANT

Vs

United Progressive Company Ltd. and Another

RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115, 151
Limitation Act, 1963 — Article 142, 65
Specific Relief Act, 1963 — Section 14, 22, 22(1), 22(2), 24

Citation : (1999) 3 CALLT 435 : (1999) 3 CALLT 34

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Mr. Sudhir Dasgupta, Mr. Amitava Ghosh and Mr. Tapas Kumar Dutta, for the Appellant; Mr. Samir Chowdhury and Mr. Dilip Kumar Mondal, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Mitra, J.—The present revisional application is taken up for hearing on contest being directed against Order No. 235, dated 25.6.98 passed by the 9th Civil Judge, Senior Division, Alipore in T.S. No. 34 of 1983. By the impugned order an application for amendment was allowed. The connected suit is for specific performance of an agreement for sate dated 11.1.80 and for other ancillary reliefs. The material allegations contained in the plaint of the connected suit were controverted by filing of a written statement. On the death of the original defendant No. 1, his heirs and legal representatives were substituted in his place. In the said suit initially an application for amendment under Order 6, Rule 17 read with section 151 of the CPC was caused to be filed with a view to incorporate paragraph 6A in the body of the plaint for assertion of the plaintiffs' claim to get back the amount spent for the running and maintenance of the cinema business, including certain sum together with interest payable thereon at 18% rate of interest. Even a prayer in terms of d(i) was sought to be included for a decree of recovery of a given sum of Rs. 2,09,915.33p. with consequent

interest thereon at the rate of 18% on and from June, 1982 till realisation. The said application for amendment was allowed by Order No. 112, dated 8.8.91. Against the aforesaid order, a revisional application was moved which was dismissed by the Division Bench of this court. Pursuant to the same, additional written statement was filed on behalf of the defendants.

2. That the hearing of the suit continued and after closure of evidence the opposite party No. 1 filed an application praying for another amendment of the plaint to amend the prayer (d) thereof in which the opposite party No.1 prayed for confirmation of possession. The said application for amendment of the plaint came up for hearing and on a contested hearing by the impugned order the learned trial Judge granted the said prayer and allowed the application for amendment. At the stage of the trial objection was taken on behalf of the defendants that the prayer for recovery of possession was made long after the period of limitation of 12 years as contemplated u/s 64 of Limitation Act and as such prayer for recovery of possession is barred by the Laws of Limitation. The same have been controverted on the side of the plaintiffs by placement of submissions u/s 22 of the Specific Relief Act and it has been contended that no question of limitation thus arises under the compass of the said provision. The subject matter of contention for the plaintiffs rotates round on the footing that it is not at all necessary for a party to pray for recovery of possession as plaintiff is entitled to get possession in execution of the decree for specific performance of agreement. Accordingly, the contention was canvassed the section 22 of the Specific Relief Act for recovery of possession is not subject to Law of Limitation. The trial court allowed the aforesaid petition for amendment. Mr. Dasgupta, the learned Advocate appearing for the petitioners, in support of his contention has placed reliance on the case of Shrinivasa Reddy and Others Vs. State of Mysore and Others, and he has drawn attention of this Court to paragraph 29 thereof and it has been contended by placement of reliance on the same that a plea that the plaintiff asked for a bare declaration though he was in a position to ask for further relief within the meaning of section 42 and hence the same should have been dismissed in mini as the same should be raised at the earliest point of time in which event the plaintiff could ask for necessary amendment to comply with provisions of section 42. A further submission has been made that there can be no right to sue until there is an accrual of the right asserted in the suit or for infringement or at least a clear and unequivocal threat to infringe that right by the defendant whether a particular case of threat constituting a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardises the said right. A further reference was made by Mr. Dasgupta to the case of Balaji Apartment Pvt. Ltd. & Another v. Flora Properties Pvt. Ltd. & Another, reported in 1998 (2). CLJ 265. The submission has been made that in terms of sub-section (2) of section 22 of Specific Relief Act, however, prohibits the court from granting any decree under sub-sections (a) and (b) of section 22(1) of Specific Relief Act and unless such relief under clause (a) or (b) of sub-section (1) of section 22 is specifically claimed by the plaintiff in

the suit for specific performance of the contract for sale and when the plaintiff has not claimed for such relief in the plaint and it has been held that the term "procedure" as used in section 22(2) of Specific Relief Act is a very wide and comprehensive term. Mr. Dasgupta has also referred to the case of Radhika Devi v. Bajrang Singh & Others, reported in 1996 AIR SCW 884, that the defendant if he has acquired right by bar of limitation, amendment if allowed, will defeat right accrued in favour of the defendant.

3. In the backdrop of the said citation referred to by Mr. Dasgupta, if the court looks at the tenor of the impugned order. It cannot but make some preliminary observations which may serve the purpose of guidelines. As the impugned order relates to the question of amendment, it is not normally allowed if it changes the cause of action. It is well recognised that amendment does not constitute an addition of a new cause of action or raise a new case but amounts to no more than adding to the facts already on record. A reference may be made in this context which was cited by Mr. Chowdhury, learned Advocate appearing for the opposite parties to the case of Vineet Kumar Vs. Mangal Sain Wadhera, where it has been observed that addition of new facts already on record would be comprehended by amendment even after statutory period of limitation. Mr. Chowdhury has further referred to the case of Babu Lal Vs. Hazari Lal Kishori Lal and Others, and reliance was placed on paragraph 21 of the said judgment in order to pinpoint the proposition that since neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree holder and the right and title passes to him only after the execution of the Deed of Sale delivered by the judgment debtor himself in the court itself. If the judgment debtor fails to execute the Sale Deed it is idle to conclude that a valuable right had accrued to the petitioner merely because a decree drawn was passed for specific performance of a contract. The limitation would start against the decree holder only after they have obtained a decree in respect of the disputed property and therefore it is difficult to accept that a valuable right had accrued to the judgment debtor by lapse of time. Section 22 of the Specific Relief Act as per observations of the apex Court has been enacted only for the purpose of curbing multiplicity of the proceedings. The said proposition gives an answer to the plea of limitation sought to be taken by Mr. Dasgupta. The aforesaid explanation as given by the Supreme Court in construction of section 22 nips in the bud the possibility of raising the plea of limitation during the currency of the proceeding. The limitation would start against the decree holder only after they have obtained a decree in respect of the disputed property as neither a contract for sale nor a decree passed on that basis gives rise to title in favour of the decree holder. In this context, the word "proceeding" has been sought to be comprehended by the apex court with reference to the meaning attributed to the same in Shorter Oxford Dictionary which defines proceeding as "guaranteed an action at law, a legal action or process, any act done by authority of a Court of law, any step taken in a case by either party". The term "proceeding" is a very comprehensive term and it means

a prescribed course of action for enforcing a legal right. Mr. Chowdhury has referred to the case of *Indira v. Arunagam & Another*, reported in 1988 (1) SCC 614 and while construing Article 65 of the Limitation Act, Supreme Court has the occasion to opine that in a suit for possession of immovable property based on title if initial burden of proof is discharged by the plaintiff regarding his title and same is established on the basis of relevant documents and other evidences, then, unless the defendant proves adverse possession for the prescriptive period, plaintiff cannot be non-suited. Supreme Court has emphasised the extent of change brought about and introduced by Article 65 of the Limitation Act in supersession of the provisions of Article 142 of the old Act relating to limitation. A reference was also made by Mr. Chowdhury, the learned Advocate appearing on behalf of the said opposite party to the case of *Debabrata Tarafder Vs. Biraj Mohan Bardhan*, where it has been observed that the mere fact that a decree for specific performance was silent with regard to the prayer for possession would be followed immediately as it is incumbent on the party concerned to fulfil all the terms including the term for delivery of possession.

4. This Court while dealing with the provisions for amendment as contemplated under Order 6, Rule 17 of the CPC has compared the inbuilt mechanism of the provisions incorporated in section 22 of the Specific Relief Act. According to the proviso superadded to section 22(2) of the Specific Relief Act, it is specifically submitted that where the plaintiff has not claimed any such relief in the plaint, the Court shall at any stage of the proceeding amend the plaint on such terms as may be just for including a claim of such relief. The same is subject to supervening stipulation of section 22(1)(a) of Specific Relief Act which postulates that any person seeking for specific performance of a contract can ask for possession or partition or separate possession of the property in addition to such performance. The amendment here in this given case relates to confirmation of possession which comes within the ambit of section 22(1)(a) of the Specific Relief Act. A comparative scrutiny of the language of Order 6, Rule 17 of the CPC that all the provision superadded to section 22, sub-section(2) of the Specific Relief Act will make it clear that Order 6, Rule 17 is discretionary but proviso to section 22(2) of the Specific Relief Act is mandatory. Therefore, amendment as comprehended u/s 22(2) proviso is placed on a superior pedestal to that of Order 6, Rule 17 and in view of the prefix of the language of non obstante clause as included in section 22(1), the same seems to prevail over Order 6, Rule 17 of the Code of Civil Procedure. Even if the proposed amendment is not allowed to be sustained, it may invite a mischief of section 14 of the Specific Relief Act where decree or dismissal of a suit for specific performance of a contract or a part thereof may operate as a bar but shall not bar any right to sue for any such relief to which he may be entitled to, namely, confirmation and/or recovery of possession. Section 24 is also a specific pointer as engrafted in the statute and keeping that provision in view, the Court should discourage the multiplicity of proceedings unnecessarily so that there may not be proliferation of litigation which can be covered in one suit and/or proceeding. Accordingly, this Court for

the reasons as mentioned above, does not feel it proper to interfere with the order impugned and as such the said order of amendment is sustained. Let the amendment be Incorporated in the body of the plaint and defendants may be given an extension of time to 31.07.99 to file the additional written statement if so desired. The defendants may take note of this part of the order. Accordingly, the revisional application stands dismissed on contest and the impugned order is sustained.

5. Application dismissed