
(1986) 06 GAU CK 0005
In the Gauhati High Court
Case No : Civil Revision No. 116 of 1986

Smt. Anima Roy

APPELLANT

Vs

Smt. Asha Rani Biswas and Others

RESPONDENT

Date of Decision : 17-06-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 7

Citation : (1986) 06 GAU CK 0005

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : S. Medhi and D.B. Baruah, for the Appellant; C.K. Sarma, Baruah and A. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—This revision petition arises from the order, dated 19-2-1986 passed by the learned Assistant District Judge (I), Gauhati in T.S. No. 2 of 1982.

2. In T.S. No. 2 of 1982, the Plaintiff filed an application for amendment under Order 6, Rule 7, Code of Civil Procedure. By that amendment petition, the Plaintiff sought by way of amendment to insert two additional reliefs one for declaration and possession of the firm, Joy Kali Trunk Factory and the other for money decree after rendition of accounts, and necessary facts for claiming the reliefs. The learned Judge allowed the amendment under order dated 19-2-1986, hence this revision petition.

3. In Ganesh Trading Co. Vs. Moji Ram, the Supreme Court has held that if a Plaintiff seeks to alter the cause of action itself and to introduce indirectly through an amendment of his pleading, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or new cause of action in place of what was originally there, the Court will refuse to permit it, if it amounts to depriving the party against which the suit is pending of any right which may have accrued in its favour by lapse of time.

4. In *Haridas v. Godrej Ruston* AIR 1983 SC 219, the Supreme Court has held that the Court should be extremely liberal in granting prayer for amendment of pleading unless serious injustice or irreparable loss is caused to the other side. The test for allowing the amendment is to find whether the proposed amendment works any serious injustice to the other side. A revisional court ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances.

5. Order 6, Rule 7, CPC gives a wide discretion to the Court to allow amendment necessary for the purpose of determining the real matter in controversy between the parties. The discretion is however judicial one and to be exercised on the sound principles of law.

6. As already stated, in the present case, the Plaintiff sought by way of amendment to insert two additional reliefs and facts for claiming the reliefs. The learned Assistant District Judge has given clear findings that the proposed amendment shall not change the character of the suit and that the amendment is necessary for the purpose of determining real question in controversy between the parties and that the amendment sought is not in consistent with the facts pleaded in the plaint. The learned Assistant District Judge after discussing the materials available on record and objections raised by the opposite party came to the said conclusions. In the light of the decisions of the Supreme Court, I do not find any reason or compelling circumstances to interfere with the order of the learned Assistant District Judge. In this view of the matter, the petition must fail in the light of the decision of the Supreme Court in *Haridas* (Supra).

7. In the result, the petition is rejected. No costs.