

(1980) 02 CAL CK 0013

In the Calcutta High Court

Case No : Letters Patent Appeal No's. 186 and 196 of 1974

Smt. Ashalata Dey and Others

APPELLANT

Vs

Kamal Kumar Bose

RESPONDENT

Date of Decision : 26-02-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : AIR 1981 Cal 36 : (1981) 1 CALLT 21

Hon'ble Judges : Bhabes Chandra Chakrabarti, J;Anil K. Sen, J

Bench : Division Bench

Advocate : Manindra Nath Ghosh and Nihar Ranjan Chatterjee, for the Appellant;S.C. Mitter and S.P. Roy Choudhury, in L.P.A. No. 196 of 1974, for the Respondent

Final Decision : Dismissed

Judgement

1. We having allowed an application for amendment of the plaint in the light of the amendment to Section 13 (1) (f) of the West Bengal Premises Tenancy Act by our order dated February 6, 1980, giving an opportunity to the defendant to file an additional written statement, such a written statement has been filed on February 20, 1980. We accept the additional written statement so filed and we frame an additional issue on the amendment so allowed in the following terms :--

Is the plaintiff in possession of any reasonably suitable alternative accommodation?

2. On the additional issues so framed it would be necessary to take additional evidence and as such, we refer the said additional issue to the trial court for recording the necessary finding thereon on taking additional evidence within a month from the date the trial court receives the records from this Court.

3. Let the records along with a copy of this order be forwarded to the trial court by a special messenger without any delay at the cost of the plaintiff-appellant. In forwarding the records to the trial court the office of this Court is directed to

forward a copy of the application for amendment of plaint filed in these appeals and a copy of the additional written statement also filed in this Court. The trial court is directed to return the records with the evidence recorded by the said court along with its findings thereon.

4. The defendant has filed an application for leave to amend the original written statement. We have heard the said application on contest. The defendant wants to raise an objection to the effect that the City Civil Court had not the pecuniary jurisdiction to entertain and try the suit in view of the fact that the original valuation set out in the plaint was not a correct valuation since the premises in suit is valued at more than Rs. 10,000/-. It may be noted that in the original written statement no objection as to jurisdiction of the City Civil Court to entertain the suit was ever raised at any point of time while the suit was pending and not even at the stage when the appeal against the said decree was pending in this Court. Such an objection is now being sought to be raised at a very belated stage when we started hearing the two cross-appeals filed under Clause 15 of the Letters Patent. The defendant states that he wants to raise such an objection in view of the decision of the Supreme Court in the case of *Maulavi Abdur Rub Firoze Ahmed and Co. Vs. Jay Krishna Arora*, .

5. Having heard the learned Advocates, we have come to the conclusion that it would not be just and proper for us to allow the defendant to raise such an objection so late and at this stage of the Letters Patent Appeal. In substance, the objection now sought to be raised is that the suit .had not been properly valued by the plaintiff when he valued the suit at Rs. 1,020/- assessed on the basis of the monthly rent. This objection, in our view, was required to be raised at the trial at the earliest stage even prior to the framing of any issue and that not having been done, it would not be just and proper to allow such an amendment at this stage so as to non-suit the plaintiff by revising the valuation. Such had always been the settled principle of law recognised by courts of law which has got the statutory recognition in Section 21(2) of the CPC incorporated by the amending Act of 1976. Though an objection has been raised by Mr. Ghosh appearing on behalf of the defendant that this provision can have no retrospective operation in respect of suits like the present nature, we are of the view that the principle underlying this provision is not a new one but, as we have indicated hereinbefore is the statutory recognition of the principles well settled by judicial decisions.

6. Such being the position, it would be quite contrary to that principle to allow the defendant now to raise such an objection.

7. In our view, there is one more reason why such an amendment should not be allowed and that is the subsequent amendment of the schedule to the West Bengal Premises Tenancy Act by the West Bengal Amending Act XXXV of 1969. The foundation of the decision of the Supreme Court was the schedule to the West Bengal Premises Tenancy Act which stood prior to the amendment by the amending Act XXXV of 1969 as aforesaid so that if the law stands amended by

the legislature omitting the value of the premises altogether from consideration, the objection sought to be raised by the amendment would have little scope. It has been suggested to us by Mr. Ghosh that this amendment of the year 1969 can have no application to the present appeals since they arise out of a suit which was pending since before the Act in view of Section 6 of the West Bengal Act XXXV of 1969. In our view, there is a necessary implication in Section 6 that the amended provisions would have application to suits pending in the City Civil Court though it may not have any application to suits specifically excluded by Section 6 being pending in the High Court or the Court of Small Causes.

8. It had been contended by Mr. Ghosh that when we had allowed the plaintiff to amend the plaint in terms of the amended provision of Section 13 (1) (ff) of the West Bengal Premises Tenancy Act, it would not be fair and reasonable on our part to deny the amendment of the written statement now sought for. We have allowed the defendant to meet the plaintiff's amendment by filing an additional written statement which we have accepted this day. If it be the contention of Mr. Ghosh that the reason, which prevailed with us in exercising our judicial discretion in allowing the plaintiff's amendment, should also be the reason for allowing the present amendment sought for by the defendant, we are unable to sustain such a contention. In our view, there are reasons for not allowing such an amendment by the defendant which have no bearing to the amendment sought for by the plaintiff and allowed by us. The first of such reasons is that such an amendment would be against the accepted principle indicated hereinbefore. The second reason is that unlike the amendment allowed to the plaintiff the defendant's amendment is not necessitated by any amendment of the statute, Thirdly, as we have indicated in our order in granting the amendment prayed for by the plaintiff, that amendment would not spring any surprise on the parties. But here in the present case if the amendment be allowed at this late stage, it will not only spring surprise on the plaintiff but is also likely to non-suit him altogether. It would not be exercise of judicial discretion to non-suit the plaintiff after 13 years of litigation particularly when the litigation is on a claim of recovery of possession based on reasonable requirement of the plaintiff. Because of these fundamental differences, the two amendments cannot be equated and no grievance can be made out that since we have allowed the amendment prayed for by the plaintiff, we should not refuse the amendment now sought for by the defendant.

9. The application, therefore, fails and is dismissed. We, however, make no order for costs.