

(2011) 08 CAL CK 0130
In the Calcutta High Court
Case No : C.O. No. 1807 of 2009

Sri Anupam Das

APPELLANT

Vs

Sri Tarun Kumar Banerjee

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144(2)

Citation : (2011) 08 CAL CK 0130

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharya and Chandroday Roy, for the Appellant; Yamin Ali, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is directed against the Order No. 20 dated April 2, 2009 passed by the learned Civil Judge (Junior Division), 3rd Court, Alipore in Title Suit No. 37 of 2007 thereby rejecting an application under Order 6 Rule 17 of the CPC filed by the Plaintiff.

2. The Plaintiff/Petitioner herein instituted a suit being Title Suit No. 37 of 2007 for a decree of permanent injunction restraining the Defendant from causing obstruction to the Plaintiff in erecting boundary wall on the portion of the schedule land of the plaint, other reliefs before the learned Civil Judge (Junior Division), 3rd Court, Alipore. The Defendant/opposite party is contesting the said suit by filing a written statement denying the material allegations raised in the plaint. The suit was at the stage of peremptory hearing. At that time, the Plaintiff filed an application for amendment of the plaint contending that some subsequent facts after filing of the suit are to be incorporated in the plaint for adjudication of the matter in dispute. So, the amendment of the plaint was necessary. Upon hearing both the sides that application for amendment of the plaint was rejected. Being aggrieved, this application has been preferred by the Plaintiff.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the copy of the application for amendment of the plaint has been annexed as Annexure "C" to the application appearing at page No. 17. If the proposed amendment is perused, it will be seen that the Plaintiff/Petitioner herein has wanted to incorporate the fact that during the pendency of the suit, the Plaintiff filed an application u/s 144(2) of the Code of Criminal Procedure and u/s 107 of the Code of Criminal Procedure separately. Ultimately, the matter was settled between the parties and the Plaintiff constructed a commode privy after removal of the existing privy in the ground floor of Lot-"A" as per demand of the Defendant. The said settlement was held on March 25, 2007 and the Defendant undertook to take separate water supply line from the main Corporation supply line and that he would not make any obstruction raising the Plaintiff's boundary wall in the position as shown "X"-"Y" of the sketch map attached to the plaint. A portion wall was raised by the Plaintiff keeping a gap of 2 feet. In spite of such undertaking the Defendant has taken water connection by tapping "T" from the Plaintiff's own independent water supply line.

5. I have stated earlier that the relief sought for by the Plaintiff in his plaint. The proposed amendment is no doubt on subsequent event after filing of the suit. But, it is to be seen whether it is at all necessary for the purpose of adjudication of the matter in dispute between the parties. I have stated above that the Plaintiff prayed for a decree or permanent injunction restraining the Defendant from causing obstruction to the Plaintiff in erecting the boundary wall on the portion of the scheduled land of the plaint. The subsequent fact as stated is related to the matter of construction of the boundary wall also.

6. The Defendant has contended that by way of amendment, the Plaintiff has wanted to legalize an illegal proceeding which is not permissible under law. Similarly, the story of setting up of a commode privy in place of the existing privy is out and out false. But he has admitted that the Plaintiff has set up a commode privy in Lot-"A" at the time of raising his illegal portion of wall at the mouth of the alleged passage.

7. This being the position, I am of the view that the subsequent facts are related to the matter in dispute between the parties and so, for an effective, I hold, adjudication, the proposed amendment is necessary.

8. The learned Trial Judge has observed that if the proposed amendment is allowed, a new cause of action would arise and it would alter the existing cause of action. In the instant suit, it may be noted herein that by the proposed amendment, the Plaintiff has not sought for any additional relief in the plaint. The suit remains as it was before, i.e. for permanent injunction and other reliefs. The subsequent fact must be included to adjudicate the matter completely. In the instant case, the amicable settlement was held on March 25, 2007. This has a certain impact over the main reliefs sought for in the suit. The proposed

amendment if allowed, the Defendant will not be prejudiced. In any way, he would get the chance of filing additional written statement. The proposed amendment should, therefore, be allowed for the purpose of shortening the litigation, preserving the rights of both the parties and to subserve the ends of justice. Therefore, I am of the view that the proposed amendment should have been allowed by the learned Trial Judge for the purpose of adjudicating the matter in dispute once for all.

9. Accordingly, I am of view that the learned Trial Judge has committed errors of law in rejecting the application for amendment of the plaint. The impugned order, therefore, cannot be sustained.

10. Therefore, the revisional application succeeds. It is allowed. The impugned order is hereby set aside. The Plaintiff is directed file the amended plaint within two weeks from the date of communication of this order to the learned Trial Judge.

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

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