
(2011) 08 CAL CK 0097
In the Calcutta High Court
Case No : C.O. No. 1723 of 2011

Sri Parbati Chorone Roquitte

APPELLANT

Vs

Sri Anil Chorone Roquittee and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17

Citation : (2011) 08 CAL CK 0097

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : J.R. Chatterjee and S. Banerjee, for the Appellant; S. Banerjee, Sourabh Guha Thakurata, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—Challenge is to the Order No. 136 dated April 12, 2011 passed by the learned Judge, 5th Bench, City Civil Court, Calcutta in Title Suit No. 1857 of 1999 thereby allowing an application under Order 6 Rule 17 of the Code of Civil Procedure

2. The Plaintiffs/opposite parties herein instituted a suit being Title Suit No. 1857 of 1999 against the Petitioner and the opposite party Nos. 4 to 11 for declaration that the deed of cancellation of the deed of trust executed by the Defendant No. 1 on April 1, 1999 is void, other declarations, permanent injunction and other reliefs before the learned Judge, City Civil Court, Calcutta. The Defendants are contesting the said suit by filing a written statement denying the material allegations raised in the plaint and prayed for dismissal of the suit. Thereafter, the Plaintiffs filed an application under Order 6 Rule 17 of the CPC for amendment of the plaint and that application was allowed by the impugned order. Being aggrieved, the Defendants have preferred this revisional application.

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 by the proposed amendment as appearing Annexure "P-2" at page No. 37, the Plaintiffs have wanted to incorporate the date of death of the Defendant No. 1 and to note accordingly the heirs consequently who are already on record. On getting a copy of the written statement, they came to know that the Defendant No. 1 executed a deed of gift dated December 27, 2004 in favour of the Defendant No. 2 and on knowing such fact, they have wanted to incorporate certain facts to the effect that the Defendant No. 1 was an octogenarian and he lost his physical capacity and mental soundness completely and as such, he was incapable of executing any deed whatsoever. The deed of gift in favour of the Defendant No. 2 was done under practising fraud, coercion, undue influence and misrepresentation. Accordingly, consequential reliefs have been sought for. The Plaintiffs have clearly stated that they came to know such fact on getting the copy of the written statement and so, these facts were known to him only on getting the copy of the written statement and not before. The Defendants have denied such contention of the Plaintiffs totally by filing a written objection against that application for amendment of the plaint. They have contended that the application for amendment could not be allowed at the belated stage and it will not be proper to say that if the prayer is allowed, it would solve the real questions in controversy between the parties and avoid multiplicity of suits. Therefore, the defence stand as taken by the Defendants is that if the application for amendment is allowed to stand on the plea of subsequent events, the nature and character of the suit will be changed.

5. In a suit of this nature between the close relations sometimes the transaction may not come to light and the donor, that is, the Defendant No. 2 was residing with his son, donee, that is, the D.W.2 in the same house and so, it is difficult for the other sons to know if any deed was actually executed or not inasmuch as the change of the possession of the suit property may not be noticed by others and it may remain the same as it was before.

6. Under such circumstances, I am of the view that the question of merit of the application for amendment will not be a matter of consideration at the time of granting amendment. What is necessary to determine is whether if the proposed amendment is allowed, it will solve the matter in controversy between the parties once for all. At the same time, it will be looked into if the proposed amendment is allowed, it would cause any injustice or prejudice to the other side. In the instant case, though the suit was filed in the year 1999, there was delay in the matter of disposal of application under Order 39 Rules 1 and 2 and Order 40 of the CPC and the suit is yet at the stage of framing of issues, that is, trial of the suit has not yet commenced.

7. Under the circumstances, if the proposed amendment is allowed as done by the learned Trial Judge, the Defendants will be at liberty to file an additional written statement and both the parties will be at liberty to adduce evidence in support of their respective contentions. So, the question of suffering injustice or

prejudice by the Defendants does not arise at all. Since, the Plaintiffs have wanted to challenge the deed of gift executed in the year 2004, if it is not allowed, the Plaintiff may have to file another suit for cancellation of the said deed of gift and in such a situation, the multiplicity of the suit is likely to occur. On the other hand, if the proposed amendment as allowed is continued, it may solve the dispute between the parties once for all in one suit.

8. In arriving at such decision, I have considered the decision of Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, which clearly lays down that amendment should be allowed for the purpose of determining the real controversy between the parties and the court is at liberty to take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both the parties and to subserve the ends of justice.

9. In that view of the matter, I hold that the learned Trial Judge has rightly allowed the application for amendment of the plaint. There is no scope of interference with the impugned order.

10. Accordingly, the revisional application is dismissed.

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.