
(2019) 08 CAL CK 0242

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (CO) No. 1425 Of 2017

Tapas Kumar Mondal

APPELLANT

Vs

Ranajit Mondal & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2019) 08 CAL CK 0242

Hon'ble Judges : Biswajit Basu, J

Bench : Single Bench

Advocate : Saunak Bhattacharya, Chandra Nath Sarkar, Satyajit Mondal, Suranjan Mondal

Final Decision : Allowed

Judgement

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Biswajit Basu, J

Affidavit of service filed in Court today be kept on record.

The plaintiff/petitioner filed a suit being Title Suit No. 363 of 2015 in the 2nd Court at Diamond Harbour, District : 24 Parganas (South) for a decree of declaration of his title over the suit property and a decree of permanent injunction as a consequential relief thereof.

In the said suit the plaintiff/petitioner filed an application seeking amendment of the plaint on the ground that subsequent to the filing of the suit he has been dispossessed by the defendants in violation of the order of injunction passed in the said suit in his favour.

The learned Trial Judge by the later portion of the impugned order no. 18 dated March 06, 2017 has dismissed the said application holding that the facts sought to be incorporated in the plaint by the proposed amendment are not events happened subsequent to the filing of the suit as alleged by the plaintiff/petitioner.

The plaintiff/petitioner in the said application for amendment has alleged that he has been dispossessed from the suit property on December 03, 2015 in violation of the order of injunction passed in the suit on December 02, 2015 whereby the defendant nos. 1 to 4 have been restrained by an order of injunction from dispossessing the plaintiff/petitioner from the suit property.

Grant of an order of injunction in the aforementioned form justifies the claim of the plaintiff/petitioner on the ground that he was in possession of the suit property at least as on the date when the said order of injunction was passed.

The learned Trial Judge therefore is not justified in rejecting the said application for amendment that averment sought to be incorporated by the proposed amendment are not subsequent events.

The veracity of the statements of the proposed amendment cannot be a consideration in deciding an application under Order VI Rule 17 of the Code, which will be tested in course of the trial of the suit.

The order impugned for the aforesaid reasons is set aside.

CO 1425 of 2017 is allowed. No order as to costs.

The petitioner/plaintiff is permitted to file amended plaint within fourteen days from date. The petitioner/plaintiff shall serve a copy of the amended plaint immediately after its filing to the Court below.

The opposite parties/defendants are at liberty to file additional written statement within a period of fourteen days after receipt of the copy of the amended plaint.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.