

Joydeb Laha Vs. Joy Singh

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Court : Guwahati

Decided On : May-30-2007

Judge : Aftab H. Saikia, J.

Acts : Code of Civil Procedure (CPC) - Sections 18 - Order 6, Rules 4 and 17;
[Constitution of India](#) - Article 226

Appeal No. : W.P.(C) No. 2657 of 2006

Appellant : Joydeb Laha

Respondent : Joy Singh

Advocate for Def. : B.R. Dey, D. Choudhury and A.K. Paul, Advs.

Advocate for Pet/Ap. : A.S. Choudhury, D.C. Nath, I. Hussain, A. Maleque, N.N. Ahmed, R. Ali and S.N. Dev, Advs.

Disposition : Petition dismissed

Judgement :

Aftab H. Saikia, J.

1. Heard the learned Counsel for the parties.
2. Having considered the pleaded case of the petitioner and upon hearing the learned Counsel for the parties, it is felt that since the matter relates to rejection of

the prayer for amendment of the plaint made by the plaintiff/ petitioner, it would be unnecessary to keep the matter pending and accordingly, the court proposes to dispose of the matter today itself.

3. On meticulous perusal of the materials available on record in this writ petition, it appears that this application has been filed under Article 226 of the [Constitution of India](#) for issuance of a Writ of Mandamus/ Certiorari or an appropriate Writ/Order of direction in a challenge to the order dated 15.12.2005 rendered by the learned Civil Judge (Senior Division), Bongaigaon in T.S. No. 26/2002 whereby the prayer made by the petitioner/plaintiff for amendment of the plaint including the impleadment of the concerned party was rejected with the following prayer:

Under the above circumstances, it is prayed that your Lordships would be pleased to admit this application, call for the records, issue a Rule calling upon the respondent to show cause as to why the impugned order 15.12.2005 passed in T.S. No. 26/2002 by the learned Civil Judge (Senior Division), Bongaigaon shall not beset aside and quashed and as to why a writ of mandamus or any other appropriate Writ/Order or direction shall not be issued to learned Civil Judge (Senior Division), Bongaigaon and after perusal of the records, causes shown, if any, and upon hearing the parties, be pleased to make the Rule absolute and/or pass any other appropriate order or direction as your lordships deem fit and proper in the facts and circumstances of the case so as to grant adequate relief/ reliefs to the petitioner in the interest of justice.

And pending disposal of this petition, the operation of the impugned order dated 15.12.2005 in T.S. No. 26/2002 by the learned Civil Judge (Senior Division), Bongaigaon as also further proceeding of T.S. No. 26/ 2002 may be stayed to meet the ends of justice.

And the humble petitioner, as in duty bound, shall ever pray.

4. In consideration of the averments made in this writ petition as well as the prayer aforequoted, it appears that notwithstanding alternative remedy available in a regular civil proceeding, the petitioner has proceeded to invoke the writ jurisdiction to assail the order passed by the competent civil court and as such, this Court is

prima facie, of the view that this petition in the present form is not maintainable.

5. At this stage, the learned Counsel representing the petitioner has prayed that this writ petition may be treated as Civil Revision Petition and disposed of accordingly.

6. Prayer granted.

7. Let this petition be registered as Civil Revision Petition.

8. Having carefully scanned the impugned order, it transpires that the petitioner as the plaintiff initially instituted the related Title Suit against the respondents arraying them as defendants for declaration, part performance and injunction praying, inter alia, for a decree directing the respondent No. 1 to execute and register the sale deed in term of the agreement for sale dated 22.12.2001. But subsequently he found that the original donor of the respondent No. 1 to whom the land in question was gifted, transferred the suit premises by executing registered sale deeds on 28.2.2003 and 28.1.2004 in favour of one Nitai Dey who was now trying to take possession of the suit land forcefully. Under such circumstances, the amendment was sought by the petitioner for impleadment of the said Nitai Dey with the prayer for cancellation of those sale deeds.

9. After hearing the learned Counsel for the parties on the amendment petition, the trial court held as under:

After considering the above facts and circumstances of the case and the submissions made by the learned advocates of both the parties it is seen that the plaintiff has instituted the present suit for a decree of a specific performance of contract and the proposed amendment is sought for cancellation of sale deeds. Moreover as Sri Nitai Dey has instituted a separate T.S. No. 53/04 against the plaintiff in respect of the suit premises hence the impleadment of the said Sri Nitai Dey is not required in this suit. Apart from that after considering all aspects it appears to me that the proposed amendment will change the nature and feature of the suit and the defendant will be prejudiced if the proposed amendment is allowed.

Under the above facts and circumstances the petitions filed by the Plaintiff with a prayer to implead the part and to amend the Plaint are rejected. The plaintiff is directed to file affidavit of P.Ws under Section 18, Rule 4 of the C.P.C on the next date. Fixed 7.1.2006 for P.W....

10. It is seen that if the proposed amendment, in the backdrop of the above factual premises as expressed in the amendment petition, is permitted, it would allow the plaintiff to introduce a new and fresh cause of action in substitution of original cause of action to the prejudice of the respondents. The court is in full agreement with the view expressed by the trial Judge.

11. The power of amendment is purely discretionary to be exercised judicially and zealously keeping in view each individual case so that the plaintiff is not permitted to turn his suit into a gamble at defendant's expense.

12. Order 6, Rule 17, CPC provides as under:

17. Amendment of pleadings. - The court may at any stage of proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

13. In consideration of the fact situation above and legal position, this Court does not think that the proposed amendment through which a definite and separate cause of action appears to have been brought into the suit in question, which in the opinion of the court, if permitted would change the character and identity of the entire suit, would be necessary for determining the real question in controversy raised in the suit itself.

14. In view of this matter, this Court finds no merit in this case.

15. Consequently, this petition stands dismissed.

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