

Sandip Kumar Samanta Vs. Dilip Kumar Samanta and anr.

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Court : Kolkata

Decided On : Jun-25-2004

Reported in : (2004)3CALLT545(HC)

Judge : Arun Kumar Bhattacharya, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 20 and 115 - Order 6, Rule 17; ; [West Bengal Land Reforms Act, 1955](#) - Section 8

Appeal No. : C.O. No. 2549 of 2002

Appellant : Sandip Kumar Samanta

Respondent : Dilip Kumar Samanta and anr.

Advocate for Def. : Subhasis Panchhal, Adv.

Advocate for Pet/Ap. : Sukumar Bhattacharya, Adv.

Disposition : Application dismissed

Judgement :

A.K. Bhattacharya, J.

1. The hearing stems from an application filed by the petitioner praying for revision of the order being No. 46 dated 01.08.2002 passed by the learned Civil Judge (Sr. Division), 2nd Court, Howrah in T.S. 47 of 1999.

2. The circumstances leading to the above revision are that the present petitioner, O.P. No. 1 and their younger brother Pradip Kumar Samanta purchased 3 cottahs of bastu land within municipal holding No. 46/1, Kamini School Lane, Salkia, Dist. Howrah by a deed dated 12.08.1972. and constructed a two-storeyed building thereon. Due to inconvenience in using the said property jointly, the said O.P./defendant instituted a suit being T.S. 160 of 1995 in the Court of learned Assistant District Judge, 2nd Court, Howrah for partition which was disposed of on compromise, and the 'Kha' schedule property was allotted to the O.P./ defendant, 'Ga' schedule to the petitioner and 'Gha' to Pradip. The said 'Kha' schedule is to the contiguous south-west of the allotted property of the petitioner. As per provision in the compromise petition, if any of the parties for partition desires to sell his allotted portion, he is to send notice to other parties who within one month from the date of receipt of notice would purchase the property according to the then reasonable price. On receipt of a notice from the Advocate of the present O.P. regarding his intention to sell his allotted portion expressing that he has already got an offer of Rs.4,50,000/-, the petitioner replied through his Advocate expressing his willingness to purchase the same with a request for appointment of a valuer for assessing the reasonable valuation. Lest the privacy of the petitioner be not disturbed, he instituted a suit T.S. 47 of 1999 for declaration, specific performance of contract and injunction. During pendency of the suit, the present O.P. illegally transferred his interest in the disputed property to O.P. No.2 Sukumar Chandra Roy by a deed dated 23.04.1999. On receipt of such information the petitioner filed an application for adding the said transferee as a defendant in the suit and another application under Order 6 Rule 17 C.P. Code praying for amendment of the plaint by inserting a prayer for decree for pre-emption of the disputed property which was refused by the impugned order.

3. Being aggrieved by and dissatisfied with the said order, the petitioner has preferred the present revision.

4. All that now requires to be considered is whether the learned Court below was justified in passing the said order.

5. Now, while the first part of Rule 17 of Order 6 dealing with amendment in general vests the Court with discretion, the latter part dealing with such amendments as are necessary for the purpose of determining the rule controversy between the parties imposes an obligation on the Court, and not merely a discretion to allow such amendments. Amendment to decide real issues should be allowed. At the stage of consideration of an application for amendment, the Court is not to consider the merits of the proposed amendment except for the limited purpose of satisfying itself that it is not frivolous, vexatious, mala fide or whether the claim is barred by limitation. The rule allows all amendments which satisfy the two conditions (i) of not working injustice to the other side, and (ii) of being necessary for the purpose of determining 'the real questions in controversy between the parties' : [1957]1SCR595 . Amendment altering the nature of a suit cannot be allowed. In other words, the new aspects changing the substratum of the dispute cannot be allowed. The rule that save in exceptional cases leave to amend should be refused when its effect is to take away from a party a legal right accrued to him can apply only when either fresh allegations are added or fresh reliefs sought. Here, the suit has been brought for declaration, specific performance of contract and injunction. If the proposed amendment is allowed, it will introduce an entirely different cause of action and case than one on which the suit was brought. The expression 'cause of action' in this context does not mean every fact which is material to be proved to entitle the plaintiff to succeed, and it only means a new claim made on a new basis constituted by new facts. The words 'new case' mean new set of ideas : [1966]1SCR796 . As such the prayer for amendment was rightly rejected by the learned Court below relying on the decision of this Court is : AIR1995 Cal381 where the plaintiff filed the suit for specific performance based on a contract and his application for amendment claiming a right of preemption on the basis of being a raiyat of an adjoining holding was disallowed since the nature and character of the rights claimed by the plaintiff were inconsistent, contradictory and mutually exclusive.

6. That apart, Section 8 of the W.B.L.R. Act which denies with the right of purchase by co-sharer or contiguous tenant requires an application to be filed within four months from the date of transfer in case of claim on the ground of vicinity in the Court of Munsif [now Civil Judge (Jr. Division)] on depositing the

consideration money together with a further sum of 10% of that amount. The disputed transfer took place on 23.04.1999 (when registration was completed not disclosed), but the application for amendment was filed on or about 16.12.1999 i.e. after about 8 months. Amendment cannot be allowed on the basis of a claim which is prima facie barred by limitation. However, when the law provides something to be done in some way, that thing is to be done in that way and by no others. Accordingly, considering this aspect too, there is no scope for allowing the proposed amendment.

7. In the premises, in the light of the above discussion, there being no material to interfere with the decision of the learned Court below, the present revisional application is dismissed on contest but without any cost in the circumstances.

Let a copy of this order be sent down at once to the learned Court below.

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