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Court : Kolkata Appellate

Decided On : Jan-10-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 312 of 2011

Appellant : Sanchay Kumar SamantA.

Respondent : Samit Kumar Ghosal and anr.

Advocate for Def. : Mr. D. Bandyopadhyay, Adv

Advocate for Pet/Ap. : Mr. Bidyut Kr. Banerjee, Adv

Judgement :

1. This application is at the instance of the plaintiff and is directed against the order dated January 7, 2011 passed by the learned Judge (Senior Division), Second Court at Alipore, District South 24 Parganas in Title Suit No.200 of 2008 thereby rejecting an application for amendment of the plaint filed by the plaintiff.

2. The short fact is that the plaintiff instituted a suit being Title Suit No.200 of 2008 against the opposite party for a decree of declaration and other reliefs. The plaintiff has contended that there was an agreement for specific performance of contract in respect of a flat and a car parking space at a consideration money of Rs.32,50,000/- and out of the said consideration money and an amount of Rs.50,000/- only was paid by the petitioner to the opposite party as earnest money. The opposite party no.2 was a party to that agreement for sale but she did

not sign thereon. The plaintiff filed the suit for declaration and other reliefs at first. But, ultimately, he prayed for amendment of the plaint incorporating the relief for specific performance of contract and in consequence, the prayer for amendment of different clauses of the plaint. That application for amendment of the plaint was rejected by the impugned order. Being aggrieved, the plaintiff has preferred this application.

3. Now, the question is whether the learned Trial Judge was justified in rejecting the application for amendment of the plaint.

4. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the plaintiff filed the suit for a decree of declaration that the agreement dated March 25, 2008 is still subsisting and is binding upon the plaintiff and the defendant and for a decree of declaration that the defendants have no right or authority to transfer the suit property to any third party. Thereafter, they filed the application for amendment of the plaint praying for amendment of several clauses in the manner as indicated in his application appearing as annexure P-3 at page no.23. By the proposed amendment of the plaint, the plaintiff/petitioner has wanted to include the prayer as for specific performance of contract, a decree for specific performance of contract directing both the defendants to execute and register the deed of conveyance in favour of the plaintiff upon receipt of the balance consideration money of Rs.31,50,000/- and other consequential reliefs. In order insert such prayer in the suit, the plaintiff is, of course, bound to suitably amend the other paragraphs and he has prayed for amendment of the plaint in such a manner. Therefore, I find that the cause of action of filing the suit remains the same and the entire claim has originated from the deed of agreement dated March 25, 2008 and it remains the same and one. Therefore, I am of the view that it cannot be stated that the character of the suit is being changed by the proposed amendment, rather it could be stated well that by the proposed amendment, the plaintiff has wanted to solve the dispute between the parties once for all claiming all the reliefs that he is entitled to on the basis of an agreement for specific performance of contract dated March 25, 2008. So, it could not be that by the proposed amendment, the nature and character of the suit will be changed, rather I hold that it is necessary to solve the dispute between the

parties once for all. During argument, Mr. D. Bandyopadhyay, learned Advocate appearing for the opposite parties, has submitted that the amendment of plaint introducing a new case should not be allowed and in support of his contention he has referred to the decision reported in AIR 1965 SC 1008. The ratio decided therein. I hold, is not applicable in the instant case. In that case, the plaintiff was directed to cause amendment of the plaint for the ends of justice at the appellate stage by the Court and at that time, the observation was made to that effect. The principles governing therein do not apply in the instant application and so, this decision is not applicable in the instant situation. I am of the view that the learned Trial Judge has committed a wrong in rejecting the application for amendment of the plaint. If the prayer is not allowed, there may be multiplicity of suits/proceedings between the parties. On the other hand, if the prayer is allowed, the defendants will not suffer any prejudice. Nor did the amendment cause taking away any valuable right of the defendants.

5. Therefore, the application succeeds. The impugned order is hereby set aside.

6. The application for amendment of the plaint appearing at page no.23 stands allowed. The learned Trial Judge shall proceed with the suit from the stage of allowing the application for amendment of the plaint and thereafter she shall dispose of the suit in accordance with law.

7. The application is disposed of in the manner indicated above. Considering the circumstances, there will be no order as to costs.

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

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