

Subhas Chandra Sil. Vs. Sumik Sil.

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Court : Kolkata Appellate

Decided On : Mar-01-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 1261 of 2010 With CAN No.1145 of 2011

Appellant : Subhas Chandra Sil.

Respondent : Sumik Sil.

Advocate for Def. : Mr. Sekhar Pal, Adv

Advocate for Pet/Ap. : Mr. Bidyut Banerjee,; Ms. Shila Sarkar, Advs

Judgement :

1. This application is at the instance of the defendants and is directed against the order no.33 dated November 6, 2009 passed by the learned Civil Judge (Junior Division), First Court, Durgapur in Title Suit No.172 of 2005 thereby allowing an application for amendment of the plaint.

2. The short fact is that the plaintiff/opposite party herein instituted a suit being Title Suit No.172 of 2005 in the Court of the learned Civil Judge (Junior Division), First Court, Durgapur, against the petitioners for declaration of title, permanent injunction and for other reliefs. In that suit, the defendants/petitioners herein entered appearance and they filed a joint written statement denying all the material allegations contained in the plaint. The said suit was at the stage of recording evidence and the plaintiff tendered evidence by way of an affidavit. Then the suit

was fixed for cross-examination of the P.W.1. At that stage, the plaintiff filed an application for amendment of the plaint and that application for amendment of the plaint was allowed by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the point for consideration 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 that the suit was filed by the plaintiff/opposite party herein for declaration of title, permanent injunction and other reliefs describing the suit plot number as 129. The plaintiff adduced evidence accordingly.

5. The defendants have contended that they have not encroached the suit plot, that is, 129. But, they have their homestead on the plot no.130 only. At that juncture, the application for amendment of the plaint was filed and it was allowed by the impugned order. The plaintiff/opposite party herein has contended that the suit plot was actually 130. The predecessor-in-interest of the plaintiff got the suit plot by way of lease granted by the collector by a deed of lease dated February 28, 1961. The copy of the said deed has been filed before this Honble Court at the time of disposal of this application and on perusal of the copy of the said registered deed of lease on the basis of which the plaintiff claims right, title and interest over the suit plot. This Bench finds that the plot leased out is under no.130 and to the east of the plot no.130 is the plot no.129. Thus, the basis of the claim over the suit plot is the deed of lease and this fact has been specifically averred in the plaint. Therefore, on perusal of the copy of deed, it is apparent that the plaintiff has been proceeding with the suit in respect of the land which has been specifically mentioned in the said deed of lease. But, the suit plot has been described in the plaint as 129. This mistake appears to have been done through inadvertence. Therefore, any mistake that is appearing through inadvertence is required to be corrected for effective disposal of the suit in the true sense. Mr. Banerjee, learned senior Advocate, appearing on behalf of the petitioners, submits that such type of amendment is not permissible because it is the case of the defendants that they are in possession of the plot no.130 which is adjacent to the

suit plot and that the defendants have their homestead on the plot no.130. Mr. Banerjee also contends that the plaintiff tendered examination-in-chief by way of an affidavit wherein he has admitted that the defendants are the owners of the plot no.130 which is adjacent to the suit plot. The plaintiff has also admitted possession of the defendants over the plot no.130. If amendment is allowed, the effect will be withdrawal of the admission. Not only that, the plaintiff has stated that he has no relation with the plot no.130 and that he is praying reliefs in respect of the plot no.129. So, the prayer for amendment of the plaint should have been rejected by the learned Trial Judge. The suit was filed in the year 2005, that is, after July 1, 2002 when amendment of the C.P.C. has come effective. Therefore, the amendment of the pleadings shall be guided by the provisions of Order 6 Rule 17 of the C.P.C. So, unless sufficient reason is shown, amendment should not be allowed. He has also submitted that the admission as made by the plaintiff cannot be withdrawn by subsequent amendment.

6. On the other hand, Mr. Pal, learned Advocate, appearing on behalf of the opposite parties, submits that the proposed amendment of the suit plot number is nothing but a typographical mistake. Instead of 130 it has been wrongly recorded as 129 and when such typographical mistake had occurred such could be rectified at any stage and for that reason the proviso to Order 6 Rule 17 of the C.P.C. will not be a bar.

7. In support of his contention Mr. Pal has referred to the decision of Usha Devi v. Rijwan Ahmad and ors. reported in 2008 AIR SCW 1061. This decision relates to correction of description of the suit property. When the plaintiff was not diligent and did not seek amendment at early stage though wrong description was pointed out by the defendants not only in written statements but also in course of proceedings, the prayer for amendment was allowed by the Honble Apex Court in view of the decision in 2005 (13) SCC 89. The proposed amendment was allowed subject to payment of costs of Rs.10,000/-. This decision appears to this Bench to be fully applicable in the instant case inasmuch as the mistake occurred through inadvertence as observed earlier. Therefore, this decision supports the prayer for amendment. It has been also observed that the defendants are at liberty to raise objection in regard to amended plaint by making any correspondence

amendments in their written statements. It may be mentioned herein that while allowing the application for amendment of the plaint, the learned Trial Judge has granted payment of costs of Rs.500/-. The learned Trial Judge has also directed the defendants to file an additional written statement, if any, by the next date. So, this decision of Usha Devi (supra) fully governs the situation and this Bench is of the view that the learned Trial Judge is perfectly justified in allowing the application of amendment of the plaint. Mr. Pal has next referred to the decision of Rajesh Kumar Aggarwal and ors. v. K. K. Modi and ors. reported in 2006 AIR SCW 1538 wherein it has also been observed that while considering the amendment of the pleading, the merits of proposed amendment need not be considered at that stage. It cannot be decided whether the proposed amendment is correct or false at that time,. The test that governs amendment is the real controversy test in the suit. This decision also supports the plaintiff in the matter of amendment of the plaint. So, I am of the view that proposed amendment is necessary to decide the real dispute between the parties.

8. Mr. Pal has also referred to the decision of S. M. Banerji v. Sri Krishna Agarwal reported in AIR 1960 SC 368 which lays down the principles exercising the discretionary jurisdiction by the Courts. Relying on this decision, it is submitted before this Bench that the Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations and undue emphasis on technicalities or enlarging their scope would cramp their powers and diminish their effectiveness and defeat the very purpose for which they are constituted. Thus, it has submitted that at the time of consideration of the amendment of the pleadings, the same well-settled principles should also be followed.

9. Thus, this Bench finds that by the amendment, the basic structure of the plaint is not altered. The amendment as to plot no.130 appears to be bona fide and it is necessary for the administration of justice. As regards the other portions of the amendment, these are nothing but consequential. So, the other portion of the amendment should also be allowed automatically. So far as the evidence tendered by the plaintiff is concerned, this Bench feels that the mistake of fact has been committed as the plaintiff was proceeding with the suit believing that the suit plot

no.129. Anyway, an admission cannot confer any title to the property. The parties are required to prove their stand with regard to their plots. So, an explanatory evidence may be tendered by the plaintiff afterwards with regard to his withdrawal of admission. For that reason, the defendants are not prejudiced in any way.

10. The cause of action to file the suit remains unaltered by the amendment. So, no legal right has been taken away from the defendants, by the amendment. Mr. Banerjee did not submit that the amount of costs was inadequate.

11. In view of the above findings, this Bench is of the view that the learned Trial Judge was justified in allowing the application for amendment of the plaint though it was filed at the belated stage. But, the learned Trial Judge has granted costs and also an opportunity to the defendants to file an additional written statement. This being the position, this Bench is of the view that the amendment was allowed to solve the dispute between the parties once for all and it should not be interfered with. Therefore, this Bench holds that the learned Trial Judge has exercised his jurisdiction properly and that the impugned order does not call for any interference at all. The revisional application, therefore, fails to succeed. It is, therefore, dismissed.

12. Since the time to file an additional written statement and to make payment of cost have already expired, the defendants are directed to file an additional written statement and the plaintiff, to make payment, within three weeks from date. Considering the circumstances, there will be no order as to costs.

CAN No.1145 of 2011

13. This CAN application has been filed for extension of the interim order. Since, the revisional application is disposed of today, this CAN application has now become infructuous. So, it is dismissed being infructuous.

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