

Gopal Chandra Das. Vs. Ranjit Kumar Roy

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Court : Kolkata Appellate

Decided On : Feb-22-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 3257 of 2002

Appellant : Gopal Chandra Das.

Respondent : Ranjit Kumar Roy

Advocate for Def. : Mr. Deb Narayan Roy, Adv

Advocate for Pet/Ap. : Mr. D. P. Mukherjee,; Mr. Debjit Mukherjee, Advs

Judgement :

1. Challenge is to the order no.118 dated July 17, 2002 passed by the learned Civil Judge (Junior Division), Second Court, Arambag in Title Suit No.13 of 1996 thereby rejecting an application for amendment of the written statement filed by the defendant.

2. The plaintiff/opposite party herein instituted a suit being Title Suit No.13 of 1996 for recovery of possession on the ground of reasonable requirement, default, etc. The defendant/petitioner herein was contesting the said suit all along. After his death, his heirs, that is, the present petitioners have been substituted. The contention of the defendant is that during pendency of the suit, the landlord/owner got other accommodations and his accommodations were rented to other persons. This fact was not known to him earlier and so, he filed the application for additional

written statement when he became aware of the fact. That application for filing written statement was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the point for consideration is whether the order impugned should be sustained.

4. Upon hearing the learned Advocates of both the sides and on perusal of the materials on record, I find that the suit for eviction on the ground of reasonable requirement and default, etc. was filed in the year 1996. The original defendant was contesting the suit all along by filing a written statement. Evidence of both the sides was completed on March 22, 2002 and the next date was fixed on April 18, 2002 for hearing argument over the suit. Thereafter, the defendant filed Hazira on April 18, 2002 but, he filed an application on May 7, 2002 praying for time for argument. According to his prayer, the next date for hearing argument was fixed on May 15, 2002. On that day, the plaintiff filed an application for adjournment which was granted and the next date was fixed on June 28, 2002 for hearing argument. On that day, the defendant again filed an application for adjournment of hearing and the next date was fixed on July 10, 2002 for hearing argument. When the suit was taken for hearing argument on July 10, 2002, the defendant filed a petition that during pendency of the suit, the plaintiff got accommodations and those were let out to other persons.

5. It may be noted herein that the suit premises is a shop room situated at the ground floor and the defendant is running a sweetmeat shop thereat.

6. The plaintiff has categorically stated that he wants the premises in suit for running a business thereat for his son. Evidence has been adduced according to the stances of the parties thereon.

7. Now, the contention of the defendant is that during pendency of the suit, the plaintiff got an accommodation of 1500 square feet on the first floor of the premises and it was let out to a computer education centre, NIIT in August, 2001. Beside that the plaintiff has let out another room to one M. K. Jewellers by a tenancy agreement on March 15, 2002.

8. So far as letting out the 1500 square feet to the NIIT in August, 2001, I find that the defendant has categorically stated that he intimated this fact to the Court earlier but it is not clear how he gave intimation to the Court. He did not seek for amendment earlier though it was within his knowledge before close of his evidence. That was let out at least six months prior to the date of close of the evidence on behalf of the defendant. Thereafter, he took several adjournments just noted above. But, he did not seek any amendment over the matter. As regards the letting out of one room to one M. K. Jewellers, I find that the tenancy agreement was also held on March 15, 2002 that is before the close of the evidence of the defendant. Thereafter, he took adjournments but he did not point out such fact.

9. From the above facts, it is clear that the defendant intended to delay the disposal of the title suit so that the purpose of filing of the suit may be frustrated. According to the decision of AIR 1967 SC 96, the Honble Apex Court has held that the delay itself is not a ground for refusing amendment but if it is made with the intention to drag the matter and also with mala fide intention to prolong the litigation, the amendment should be rejected. This has been discussed in the impugned order. The learned Trial Judge has also discussed the decision of AIR 1976 Madras 302 wherein it has been held that where permission to file an additional written statement was sought for to the effect of easementary right of pathway extending over 12 years on the basis of information acquired from Panchayat record while the original written statement stating that the new right was laid down only five months before permission sought for after examination of witness by the defendant held permission was rightly refused.

10. The learned Trial Judge has elaborately discussed the decisions referred to by both the parties and ultimately he has analysed the entire situation and come to a finding that the application for filing additional written statement was made at a belated stage with intention to prolong the proceeding and also to fill up the lacuna in evidence.

11. As regards the lacuna of evidence on behalf of the defendant, the learned Trial Judge has also discussed the evidence on record to the effect that at the time of recording evidence of the D.Ws., they were asked some questions which were not

in the pleading at that time. So, it was intended to fill up the lacuna.

12. This being the position, I am of the view that the learned Trial Judge has rightly rejected the said application for filing an additional written statement. There is no ground for interference at all.

13. The application is, therefore, dismissed. Since the suit is old and is pending for hearing argument since April 18, 2002, the learned Trial Judge is directed to dispose of the suit within 30 days from the date of communication of this order.

14. Considering the circumstances, there will be no order as to costs.

15. 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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