

Sri Dilip Kumar Panja and ors. Vs. Sri Goutam Kumar Panja and ors.

Sri Dilip Kumar Panja and ors. Vs. Sri Goutam Kumar Panja and ors.

SooperKanoon Citation : sooperkanoon.com/911901

Court : Kolkata Appellate

Decided On : Dec-13-2010

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 3056 of 2009

Appellant : Sri Dilip Kumar Panja and ors.

Respondent : Sri Goutam Kumar Panja and ors.

Advocate for Def. : Mr. D. P. Mukherjee; Mr. Debjit Mukherjee, Advs

Advocate for Pet/Ap. : Mr. Buddhadeb Ghosal, Adv

Judgement :

1. This application is at the instance of the defendants and is directed against the order dated August 3, 2009 passed by the learned Civil Judge (Senior Division), First Court, Howrah in Title Suit No.66 of 2000 thereby allowing an application for amendment of the plaint.

2. The short fact is that the plaintiff/opposite party instituted a title suit being Title Suit No.66 of 2000 against the defendants/petitioners herein praying for a decree for declaration, confirmation of possession, injunction, etc. The defendants entered appearance in the suit and they are contesting the same. During pendency of the said suit, the defendants filed an application for amendment of their written statement praying for addition of certain new facts and such prayer for amendment of the written statement was granted by the learned Trial Judge after hearing both

the sides. Accordingly, amendment of the written statement took place. Thereafter, on going through the amended written statement thoroughly, the plaintiff came to know for the first time that certain registered deeds had been executed even prior to the date of filing of the suit. On getting such information, the plaintiff immediately applied for certified copy of the documents from the concerned office of the Sub-Registrar and ultimately got the same only on January 7, 2009. Then, the plaintiff consulted his lawyer and he was advised to file an application for amendment of the plaint to avoid multiplicity of suits and proceedings between the parties. Accordingly, he filed an application for amendment of the plaint. The petitioners herein filed an objection to that petition for amendment of the plaint. Upon due consideration of the contents of both the parties, the learned Trial Judge allowed the prayer for amendment of the plaint by the impugned order. Being aggrieved, the defendants have come up with this application.

3. The question that arises for decision in this application is whether the learned Trial Judge is justified in allowing the application for amendment of the plaint.

4. Upon hearing the learned counsel for the parties and on perusal of the materials on record, I find that the suit filed by the plaintiff/opposite party herein was for declaration, confirmation of possession, injunction, etc. The defendants entered appearance in the suit and they are contesting the same by filing a written statement. Subsequently, they filed an application for amendment of the written statement and that was granted by the learned Trial Judge. On getting information about the execution of the certain documents in the year 1993 and 1999, i.e., prior to the date of institution of the suit, the plaintiff prayed for amendment of the plaint to incorporate certain facts relating to those deeds and in consequence he has prayed for moulding the relief sought for earlier. Thus, I find that the proposed amendment came to light when the defendants filed the amended written statements.

5. In short, by the proposed amendment, the plaintiff has wanted to deny that before the Deed of Settlement dated March 1, 1993, the property covered by the alleged main Deed of Settlement was allegedly transferred in favour of the contesting defendants by the purported deed dated February 8, 1993 or that the

purported deed was executed by Paresh Chandra Panja, since deceased, father of the plaintiff, on the basis of power of attorney dated April 27, 1992. The plaintiff has also wanted to say that the Sale Deed dated February 8, 1993 is nothing but a mere or sham transaction and is the product of fraud, collusion, coercion, undue influence, misrepresentation and no actual transfer had been made on the basis of such purported deed of sale dated February 8, 1993. So, he has also prayed for declaration that such deed dated February 8, 1993 is void, illegal and not binding upon the plaintiff, etc. Thus, I find that the amendment is the consequence of the amendment of the written statement and on realising that certain documents have been referred to in the additional written statement, the plaintiff has wanted to incorporate certain facts with also prayer to mould the reliefs as consequential.

6. The plaintiff has explained clearly the reasons for delay in praying for amendment of the plaint and I find that there is justification in praying for such amendment. If the amendment was not granted, the plaintiff is required to file another suit with regard to the deeds referred to earlier. Since it is a motto that all the disputes between the parties should be settled once for all and to minimise the litigation, I am of the view that the proposed amendment is a consequential to the amendment of the written statement and the amendment has been rightly allowed by the learned Trial Judge.

7. If the amendment as granted by the learned Trial Judge is allowed to continue, the defendant would get an opportunity to file an additional written statement, if they like to do so. Therefore, they have no chance of suffering any prejudice because of the amendment of the plaint.

8. The suit having been filed in the year 2000 and sufficient cause having been explained by the plaintiff for delay in presenting the amendment, I am of the view that such sort of amendment has been rightly allowed by the learned Trial Judge to avoid multiplicity of the suits and proceedings and to minimise the litigation between the parties. The learned Trial Judge has also granted costs for allowing such amendment at the belated stage.

9. In that view of the matter, I hold that the learned Trial Judge has rightly exercised the jurisdiction vested in him. The order impugned cannot be said to be

perverse at all or without jurisdiction. It does not suffer from any errors of law.

10. Therefore, I hold that this application is meritless. Accordingly, it is dismissed.

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

12. The plaintiff shall file the amended plaint before the learned Trial Judge within 15 days from the date of communication of the order.

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

(Prasenjit Mandal, J.)

Later:

14. Since the amended plaint has been filed by the plaintiff / opposite parties, the defendants/petitioners are permitted to file the additional written statement within 15 days from the date of communication of this order.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com