(2011) 11 CAL CK 0018

Calcutta High Court

Case No: C.O. No. 185 of 2011

Sri Anindya Dasgupta and Ant.	APPELLANT
Vs	
Debasish Baisya and Others	RESPONDENT

Date of Decision: Nov. 28, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 151
- Constitution of India, 1950 - Article 227
- Limitation Act, 1963 - Article 55, 56, 58, 59

Citation: (2012) 4 CHN 199

Hon'ble Judges: Md. Abdul Ghani, J

Bench: Single Bench

Advocate: Sabyasachi Bhattacharyya and Mr. Shehnaz Tareq Mina, for the Appellant; J. Islam and Mr. Z. Islam for the O.P. Nos. 1 and 2 and Mr. Sourabh Guhathakurata for the O.P. No. 3, for the Respondent

Judgement

Md. Abdul Ghani, J.

The instant application under Article 227 of the Constitution of India is directed against the order dated 24th September, 2010 passed by learned Civil Judge (Junior Division), 1st Court at Alipore, District South 24-Parganas in Title Suit No.219 of 2006.

2. From the submission of the learned Counsel for both the parties and also from the materials-on-record it would appear that the plaintiffs initially instituted the aforesaid Title Suit No being 219/2006 for declaration, re-opening of the accounts, permanent injunction and damages against opposite party Nos.1 & 2.

3. Subsequently, opposite party No.3 was allowed by the Court to be a party defendant to the suit in question because of his purchase of the suit premises from defendant No.2, Nantu Dasgupta, by virtue of deed of conveyance dated 21st June, 2006. After opposite party No.3 was added as a party-defendant to the suit he also

filed written statement in the said suit on 11.12.2009 and thereafter the suit was fixed on 25.5.2010 for discovery when after being supplied with the copy of the deed dated 16.6.1993 plaintiffs came to know that the said deed dated 16.6.1993 was a fabricated document, obtained fraudulently and as such it was not binding upon them as because they never executed such deed. In the circumstances, plaintiffs thought it proper to file an amendment application seeking certain amendment of the plaint. Accordingly, plaintiff by filing an application dated 16.7.2010 under Order 6 Rule 17 read with Section 151 CPC sought for certain amendment of the plaint. Thereafter, learned Court below upon hearing the learned Counsel of both sides rejected the amendment application upon a finding that the application was time-barred.

4. Being aggrieved by and dissatisfied with the order impugned the petitioners have come up before this Court praying for setting aside the impugned order and for obtaining leave to amend the plaint.

5. Mr. S. Bhattacharyya, learned Counsel appearing for the petitioners while making submission draws this Court''s attention to the contents of the amendment application as also the plaint of the suit and some other materials-on-record and contends that the amendment sought for being simple which practically does not bring about any change as to nature and character of the suit should be allowed for ends of justice. Further in support of his contention he relies upon a decision reported in 2001 2 SCC 472 (Ragu Thilak D. John Vs. S. Rayappan & Ors.), Andhra Bank Vs. ABN Amro Bank N.V. and Others, Para 5 Page 170 as also the provisions of Article 56 and 59 of the Indian Limitation Act and argues that the Court below ought to have allowed the amendment application ignoring the delay for the sake of avoiding multiplicity of suit and also for appropriate adjudication of the controversy involved in the suit.

6. On the other hand, Mr. J. Islam, learned Counsel appearing for the opposite party Nos.1 & 2 referring to the contents of the plaint, amendment application as also some other materials including the written statements urges that the amendment application having been filed at a unreasonably delayed stage should not be allowed inasmuch as the petitioners were made well aware about the contents of the deed of conveyance dated 16.6.1993. In support of his contention, he refers to the contents of the impugned orders and strongly submits that after knowing about the alleged fraudulent deed plaintiff brought a police case in 2006, which ended in FRT and during investigation of the said police case being Kasba P.S. No.169 of 2006 dated 20.8.2006, police seized the copy of the deed No.8132 dated 16.6.1993 from petitioner No.2. Further, in support of his submission he relies upon a ruling reported in Kanailal Das and Another Vs. Jiban Kanai Das and Another, S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, as also the provisions laid down in Articles 55 and 58 of the Limitation

Act and urges that the proposed amendment being mala fide, learned Court below committed no mistake in rejecting the amendment application.

7. Mr. S. Guhathakurata, learned Counsel for the opposite party No.3 while making submission contends that the story of acquisition of knowledge about the alleged execution of the fraudulent deed is not believable and, as such the impugned order needs no interference by the Court. Further he relies upon a ruling reported in 2009 2 SCC and submits that it would be highly prejudicial on the part of his client if the impugned order be set aside.

8. From the materials placed before the Court and also from the submissions made by the learned Counsel appearing for the respective parties it would be evident that initially the petitioners instituted the suit being Title Suit No.219 of 2006 for declaration, re-opening of the accounts, permanent injunction and damages, etc. against the opposite party Nos. 1 and 2.

9. Subsequently, opposite party No.3 was added as a party-defendant to the suit by the order of the Court and said opposite party No.3 filed written statement in the said suit. Further it would be manifest from the record that the petitioners by filing an application under Order 6 Rule 17 read with Section 151 CPC on 16.7.2010 prayed for obtaining leave to amend the plaint contending that the opposite party No.3 purchased the suit premises by virtue of registered deed of conveyance on 21.6.2006 from opposite party No.2 in a collusive and fraudulent manner. In the amendment application both the deeds dated 16.6.1993 and 21.6.2006 have been alleged to be fabricated, fraudulent, invalid, collusive and without any legal force or merit and not binding upon the petitioners. In view of the ruling reported in 2001 Volume 2 Supreme Court Cases 472 Raghuthila Dijan Vs. S. Rajapan and Ors. amendment of the plaint may be allowed even if the plaint is barred by limitation with a view to avoid multiplicity of the suits as also for proper adjudication of the dispute involved in the suit and that no hypertechnical approach should be adopted by any Court at the time of deciding such amendment application. Para 3 of the judgment reported in the ruling referred to above may be set out as under:

The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But, it is equally true that the Courts while deciding such prayer should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

10. In view of the principles laid down in the aforesaid ruling limitation point is arguable in the circumstances of the case. It has been highlighted in the said ruling that the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for. In the ruling reported in AIR 1977 (Cal) 1989 (Kanailal Das and Ant. Vs. Jiban Kumar Das and Ant.), it may be said that all amendments will be generally permissible when there is necessity for determination of the real controversy involved in the suit provided the amendment does not cause prejudice to the other side which cannot be compensated with cost. Of course, introduction by amending of inconsistent or contradictory allegations in negation of the admitted position on facts or mutually destructive allegations on facts are not permissible. In the ruling reported in G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another, as relied upon on behalf of the opposite party Nos. 1 and 2 it has been held that non-disclosure of fact that interim stay order was passed by High Court goes against the grant of amendment application. In my considered view, this ruling is not applicable in the present case. Further, in view of the ruling reported in 2009 Volume 2 ICC as relied upon on behalf of the opposite party No.3 if the application for amendment is bona fide which should not cause injustice to the other side and which should not affect the right already accrued to the other side, the amendment should be allowed.

11. Having regard to the facts and circumstances of the case, it would appear that the amendment sought for does not bring about any change as to nature and character of the suit and that no prejudice will be caused to the other side if such amendment application is allowed. In this view of the matter, amendment sought for has become material for determining the real controversy between the parties involved in the suit as also for avoiding multiplicity of the suits.

12. Therefore, having heard the learned Counsel for the respective parties and also giving due regard to the principles of the ruling relied upon on behalf of the parties concerned I am of the view that the submission made on behalf of the petitioner carries sufficient force and merit. True, it is that the amendment application has been filed at a very belated stage, but having regard to the principles laid down in the ruling relied upon on behalf of the petitioners, as well as the rulings relied upon on behalf of the opposite parties and also giving due consideration to the legal position as enumerated in the rulings referred to above, I find reasons to understand and believe that the amendment sought for in the Court below ought to have been allowed subject to payment of cost. In the circumstances, I am satisfied to hold that the impugned order is not sustainable in the eye and estimation of law and accordingly the application under Article 227 of the Constitution of India stands allowed by setting aside the impugned order and permitting the petitioners/plaintiffs to amend the plaint subject to payment of cost of Rs.10,000/-(Rupees Ten Thousand) to be paid by the petitioners to the opposite parties within 2 weeks from the date of communication of the order.

13. With the above observation, the application stands disposed of.

14. Let xerox certified copy of this order, if applied for, be given to the learned Advocates appearing for the parties expeditiously.