(2011) 08 CAL CK 0025

Calcutta High Court

Case No: C.O. No. 3938 of 2007

Sm. Minu Rani Maity		APPELLANT
	Vs	
Smt. Nibedita Das and Others		RESPONDENT

Date of Decision: Aug. 4, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Citation: (2011) 08 CAL CK 0025

Hon'ble Judges: Raghunath Bhattacharya, J

Bench: Single Bench

Advocate: D.P. Adhikary and J.H. Mallick, for the Appellant; Ashis Kumar Bagchi and Malayasree Maity, for the Respondent

Final Decision: Dismissed

Judgement

Raghunath Bhattacharya, J.

The hearing stems from an application filed by the Petitioner praying for revision of order No. 46 dated 12.09.2007 passed by Learned Civil Judge (Senior Division), Tamluk in Title Suit No. 59 of 2006 by way of setting aside the order of the same, inter alia on the ground that the learned Court below erred in law in not considering the amendment sought for are very much delivered for the purpose of complete adjudication of the case of the Petitioner.

2. The Petitioner before this Court as Plaintiff filed an application for amendment of plaint and by way of amendment Plaintiff wanted to incorporate certain person as a necessary party to the suit and also wanted to incorporate such facts. After hearing both side the learned Court below partly allowing the amendment application by adding the some persons as necessary party to the suit refuse the other prayer sought for in the said amendment application.

3. Being aggrieved by and dissatisfied with the said order, the Plaintiff as Petitioner preferred this revisional application.

4. Admittedly this is a suit for partition. Generally in a suit for partition only the Plaintiff''s share in respect of the suit property are declared and for the purpose of effecting the said order Advocate Commissioner was appointed to demarcate the Plaintiff''s portion in respect of the suit property. Now it was contended by the learned Lawyer appearing for the Petitioner that learned Court below has made a mistake by not allowing the amendment so far the share of the added party are concerned. In reply to that the learned Counsel for the opposite party Mr. Bagchi contended that this is a simplicitor suit for partition and declaration of title. It is the only duty of the Court to declare the share of the Plaintiff and to be more correct the Petitioner in respect of the suit property and to declare his title in respect of that portion and in order to effect the partition. Court was duty bound to appoint the Commissioner to effect the decree of partition.

5. Now the decision is firmly established that while exercising the jurisdiction does not competent for the revisional Court to correct the errors of fact, however, gross or even errors of law unless the said errors have relate to jurisdiction of the Court to try the dispute itself. There are errors contemplated relate either breach of some provisions of law or to material defect of procedure affecting the ultimate decision and not to errors either of fact or of law after the prescribed formalities have been complied with. In other words the revisional court cannot interfere unless there be jurisdictional error. The principle as mentioned above are also discussed and appreciated by the judgment reported in Jai Singh and Others Vs. Municipal Corporation of Delhi and Another, Radhey Shyam and Another Vs. Chhabi Nath and Others,). Therefore, by way of this refusing the prayer of amendment I am of the opinion that learned Trial Court has not made any error either in law or in fact. Moreover, all the points raised in the amendment application has been categorically discussed so the order passed by the Court below cannot be held to be jurisdictional error. In other words unless the lower Court is shown to have committed breach of any commission of law or with committed any error of procedure which was material and may be affected ultimate decision the order cannot be interfered with.

6. Learned lawyer for the Petitioner referred to the decisions reported in Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D) and Others, and Andhra Bank Vs. ABN Amro Bank N.V. and Others, have gone through the said two decisions and the principles laid down in the said two decisions are not applicable so far the facts and circumstances of this suit is concerned. Moreover, the Plaintiff will get the opportunity to agitate the point at the time of trial at this stage I do not find any reason to interfere with the order passed by the learned Court below.

7. In view of aforesaid discussion the civil revision is thus dismissed on contest but without cost.

8. Learned Trial Court is hereby directed to complete the hearing of the suit as quickly as possible preferably by the end of this year.

9. Urgent photostat certified copy, if applied for, be handed over to the parties as early as possible.