

(2007) 05 CAL CK 0005

Calcutta High Court

Case No: CO. No. 2154 of 2005

Rabindra Nath Das

APPELLANT

Vs

Karuna Das and Others

RESPONDENT

Date of Decision: May 10, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227

Citation: (2007) 2 ILR (Cal) 261

Hon'ble Judges: Prabuddha Sankar Banerjee, J

Bench: Single Bench

Advocate: Ashish Bagchi and Santa Dolui, for the Appellant; P.S. Sahoo, for the Respondent

Final Decision: Dismissed

Judgement

Prabuddha Sankar Banerjee, J.

This revisional application is one under Article 227 of the Constitution and is directed against order No. 19 dated 26.4.2005 passed by the Learned Additional District Judge, First Track court, Tamluk in connection with Civil Revision Case No. 5 of 2005.

2. The Said revision was preferred against Order No. 23 dated 19.3.2003 passed by the Learned Civil Judge, Senior Division, Tamluk in Title Appeal No. 35 of 1998.

3. The present Petitioner filed one suit being T.S. No. 44 of 1990 against the present Petitioner (opposite parties-sic) for declaration and injunction.

4. The Plaintiff filed the said case on the ground that the property in question which was the subject matter of the title suit and details of which have been mentioned in the Schedule of the plaint belong to him exclusively.

5. The Defendants being the relatives of the Plaintiff contested the said case by filing written statement.

6. The Learned Trial Judge after due consideration of evidence and materials on record dismissed the suit and against that order, the Plaintiff preferred one appeal which was numbered as Title appeal No. 35 of 1998.

7. While the appeal was pending, the Plaintiff filed one application under Order 6 Rule 17 of CPC for amendment of the Plaint.

8. By filing the said application, the Plaintiff prayed for inclusion of sore other properties in the schedule of the plaint. The said prayer was rejected by the Learned First Appellate Court and against that order, the Plaintiff preferred one revision which was numbered as Civil Revision Case No. 5 of 2005.

9. By the order impugned the Learned Additional District Judge, Tamluk dismissed the said revision and being aggrieved by the order of the Learned Additional District Judge, the Plaintiff preferred this revision.

10. Mr. Ashish Bagchi, Learned counsel for the Petitioner, challenged the order mainly on the ground that the Court committed error in rejecting the application for amendment though an appeal is treated as continuation of the suit. Mr. Bagchi further took the plea that the principle of amendment of plaint is to be followed even in the case of pending appeal. If any application is filed for amendment of the plaint. At the same time, Mr. Bagchi took the specific plea that the amendment of the plaint is necessary by inclusion of other properties which were also purchased in the name of the Defendants.

11. Mr. Bagchi took the plea that the property in question actually belonged to the Plaintiff and the father of the Plaintiff purchased the said property from the Joutuk which was received by the Plaintiff during his Annaprashan. It was the further contention of Mr. Bagchi that the Trial Court ignored the said fact and dismissed the suit and against that order, the Plaintiff had to prefer one appeal.

12. It was the further contention of Mr. Bagchi that Court wrongly interpreted the statute and rejected his prayer for amendment of the plaint. In other words, it was the contention of Mr. Bagchi that by rejecting the application for amendment of the plaint, the Court invited multiplicity of cases which is against the intention of the legislature.

13. In course of his argument Mr. Bagchi relied upon the following cases:

(i) [A.K. Gupta and Sons Vs. Damodar Valley Corporation,](#)

(ii) [Beni Shankar Sharma and Others Vs. Surya Kant Sharma and Others,](#)

(iii) Sk. Roushan Ali v. Kazi Abdul Jalil (1) 1998 CLT 455

The said pleas were strongly opposed by Mr. P.S. Sahoo who contended that the Court rejected the application as the properties, which were the subject matter of the amendment application were not included in the schedule of the plaint.

14. It was the further contention of Mr. Sahoo that the Trial court on the basis of evidence and materials on record came to the clear conclusion that the suit property actually is joint property and was purchased in the name of the Plaintiff by his father from the joint income of the family. It was the further contention of Mr. Sahoo that the amendment application has been filed at a belated stage only to delay the proceeding and for this he drew the attention of the Court to the copy of the amendment application. Copy of the amendment application is at page 65.

15. Mr. Sahoo challenged the said amendment application on the ground that details have not been mentioned in the said application why the amendments sought for is required. He drew the attention of the Court to paragraph 5 of the said amendment application, which simply states that some more facts "need by pleaded by amending the plaint or better classification about the affairs of properties of all the brother."

16. This cannot be the ground for amendment. It has become the settled principle of law that the Court shall not ordinarily allow the amendment application before the appellate Court unless the same is absolutely necessary for coming to the just decision.

17. Mr. Sahoo relied upon the following cases:

i) Jayanta Mohan Chatterjee v. Jagat Mohan Chatterjee AIR 1972 Cal 89

(ii) [Ganeshi Rai and another Vs. First Additional District Judge, Ghazipur and others,](#)

(iii) [Gulshan Bibi Vs. Hasmat Ali and Others,](#)

iv [Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others,](#)

18. Now I will deal with the cases as referred by the Learned Counsels of the parties.

19. In the case in between A. K. Gupta & Sons Ltd. v. Damodar Valley corporation (Supra) the Apex Court dealt with reasons which should be considered by the Court in allowing the application for amendment.

Paragraph 8 of the said judgment runs as follows:

The principle reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish item for their mistakes) Cropper v. Smith (1884) 26 Ch D 700 (710-711) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading, sought to be amended (Kisandas Rupchand v. Rachappa

Vithoba ILR (1909) Bom. 644 at p. 651, approved in [Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others](#), at p.366).

It is therefore, clear that the said case law under no circumstances will help Mr. Bagchi's Client.

20. In the case between C.M. Vereekutty v. C.M. Mathukutty (Supra), the Hon"ble Supreme court considered the amendment application as in the preliminary decree, some properties were not correctly and fully described.

In the instant case the fact is totally different and as such, the said case will also not help Mr. Bagchi's client.

21. The case in between Sk. Roushan AH v. Kazi Abdul Jalil (Supra) will not help Mr. Bagchi's client as the principle as laid down in that case is totally different.

22. In the case in between Jayanta Mohan Chatterjee v. Jagat Mohan Chatterjee (Supra) the Division Bench of this Court came to the conclusion that if the amendment of plaint will change the nature and character of the suit raising fresh issues triable on evidence, the Court cannot allow the same.

23. In the case in between Ganeshi Rai and Anr. v. First Additional District Judge, Ghazipur and Ors. (Supra), the Allahabad High court came to the conclusion that amendment of plaint at appellate stage cannot be allowed if the said amendment is found to be prejudice of other party.

24. In the case in between Gulsha Bibi v. Hasmat Ali and Ors. (Supra) the Hon"ble Single Judge of this Court came to the conclusion that prayer made at a belated stage before the appellate Court although Trial Court had given an opportunity to adduce evidence can not be allowed. The Court further opined that there should not be any amendment during appeal to raise fresh factual question.

25. In the case between Ajendraprasadji N. Pande and Anr. v. Swami Keshavprakeshdasji N. and Ors. (Supra) the Court opined that there should be bar regarding amendment after evidence of witnesses were recorded.

26. I have already stated that the Plaintiffs lost the suit and thereafter filed appeal against order of dismissal of the suit. I have also stated that in the application for amendment, details were not mentioned why the prayer was made for amendment.

27. In view of materials on record and also considering the pleas as raised by Learned lawyer for the parties, I am of clear opinion that the Learned appellate Court did not commit any mistake in rejecting the prayer for amendment of the plaint.

28. Accordingly, the instant revisional application is dismissed on contest being devoid of any merit but without any cost.

29. It is Needless to mention that I have not gone through the merit of the case and any observation made in the body of this order is tentative and not final and the Learned appellate Court will not be influenced by any such observation in disposing of the appeal.

30. Urgent Xerox certified copy of this order be given to the parties within 7 days from the date of this order on proper application.