

(1987) 05 CAL CK 0003

Calcutta High Court

Case No: Civil Order No. 1501 of 1986

Gold Leaf Tea Co.

APPELLANT

Vs

Tribeni Tissues Ltd.

RESPONDENT

Date of Decision: May 14, 1987

Acts Referred:

- Civil Procedure Code Amendment Act, 1976 - Section 115(1)
- Civil Procedure Code, 1908 (CPC) - Section 115, 115(1)

Citation: (1987) 1 CALLT 327 : (1987) CALLT 327 : 92 CWN 296

Hon'ble Judges: Ajit Kumar Nayak, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: S.N. Mukherjee and P. Mazumdar, for the Appellant; M. Mukherjee and A. Chakraborty, for the Respondent

Final Decision: Dismissed

Judgement

A.M. Bhattacharjee, J.

This is a revisional application by the defendant-petitioner against an order allowing amendment of the plaint in a suit for ejectment filed by the plaintiff/opposite-party against the defendant-petitioner on the ground of reasonable requirement of the plaintiff and default in payment of rent and unauthorised transfer of the suit-premises by the defendant. The plaintiff has alleged inter alia that the suit-premises were let out to the defendant company on the clear stipulation that the same would be used by the defendant only as the residence of its Managing Director Amarjit Singh, but in violation of such stipulation the defendant-company parted with the possession thereof in favour of some other person and the premises were no longer in possession of that Managing Director Amarjit.

2. Written Statement, on behalf of the defendant has been filed by the said Amarjit Singh alleging that the defendant Gold Leaf Tea Co. is not a company registered under the Companies Act, but is a proprietary concern of the said Amarjit Singh and

the suit-premises have been let out by the plaintiff to and in favour of the said Amarjit Singh who is the proprietor of the Gold Leaf Tea Co. and that Amarjit Singh is still in possession thereof. The plaintiff has thereafter filed an application for the amendment of the plaint to make Amarjit and his alleged proprietary concern parties to the suit for ejectment on the allegation that there was no tenancy created in favour of Amarjit Singh or his alleged proprietary concern Gold Leaf Tea Co. and that after the defendant-company parted with possession in favour of third party. Amarjit had again forcibly entered into and taken possession of the premises. The proposed amendment having been allowed by the impugned order, the same has been assailed before us in this revision.

3. The circumscribed revisional jurisdiction u/s 115 of the CPC has now been further narrowed by the Proviso added to Section 115(1) by the Amendment Act 6f 1976 in respect of orders "made in the course of a suit or proceeding". Such an order, in order to warrant revision, must not only involve a jurisdictional issue as specified in one of the three Clauses in Section 115(1), but must also, under the newly added Proviso, satisfy one of the two further conditions mentioned therein. These two alternative conditions are that the order must be such that--(a) if it had been made in favour of the party applying for revision, it would have finally disposed of the suit, or (b) if allowed to stand, it would occasion failure of justice or cause an irreparable injury to the party against whom it was made. The first condition is not obviously satisfied in this case because even if the impugned order was made in favour of the petitioner and the application for amendment was rejected, that would not have finally disposed of the suit. Nor the second condition can be regarded to have been satisfied occasioning any failure of justice or irreparable injury to the defendant for the impugned order has only allowed the plaintiff to join Amarjit Singh and his alleged proprietary concern as parties to this suit and it is the defendant's own case in the written statement that they are in possession of the suit premises.

4. But even apart from the provisions of the Proviso to Section 115(1), inserted by the 1976-Amendment, we do not think that any jurisdictional question, which is the sine qua non for the invocation of the revisional jurisdiction, is involved in this case. The Trial Judge having perfect jurisdiction to allow the amendment and having allowed the same, this can neither be a case of failure to exercise a jurisdiction or a case of illegal assumption of jurisdiction within the meaning of Clauses (a) and (b) of Section 115(1). Nor do we think that having allowed the plaintiff to join some persons as defendants to the ejectment suit, who according to the defendant's own written statement are in possession of the premises, the Trial-Judge has made any illegal or materially irregular exercise of his jurisdiction within the meaning of Clause (c) of Section 115(1). The present revision, therefore, appears to us to be incompetent even under the provisions incorporated in the body of Section 115(1) sans the Proviso.

5. Mr. Shakti Nath Mukherjee, appearing for the petitioner, has, however, urged that the trial Court exercised its jurisdiction illegally in allowing the amendment and the learned Counsel has developed his argument in the following manner. According to the amendment proposed by the plaintiff, Amarjit Singh has taken forcible possession of the premises. If that is true, then Amarjit must have done so during the currency of the tenancy of the premises to and in favour of the defendant Gold Leaf Tea Co. to whom, according to the plaintiff, the suit-premises have been let out and who, according to the plaintiff, is a company registered under the Companies Act and is, therefore, a juridical person. Amarjit's possession, therefore, is adverse only to the said tenant of the plaintiff, namely, the registered company, but can not be adverse against the plaintiff-landlord and the plaintiff can not sue to eject the trespasser Amarjit so long the tenancy in favour of the tenant-company is subsisting. The Trial-Court, therefore, acted illegally in allowing the proposed amendment as that would enable the plaintiff to sue the person possessing the premises adversely to the tenant though under the law the landlord can not do so until the tenancy is terminated. Mr. Mukherjee has relied on the Division Bench decision of this Court in [Rahim Bux Pramanik Vs. Osman Gani Sheikh and Others](#), and on certain observations in U. N. Mitra's Tagore Law Lectures on Limitation and prescription (3rd Edition, page 161) in support of his contention

6. It is true that adverse possession of a demised property may not give rise to a cause of action to the lessor of the property until the determination of the demise. If a trespasser is possessing the tenanted property adversely to the tenant only, the landlord can not sue to eject the trespasser so long the tenancy subsists. This is on the principle that possession can not be adverse to one who has no immediate right to possession and since a landlord does not have any such right in respect of the tenanted property during the subsistence of the tenancy, he does not acquire any right of action against the trespasser possessing the tenanted property adversely to the tenant. But a trespasser, while possessing the tenanted property adversely to the tenant, may also, in a given case, assert an adverse title against the landlord also and in such a case the landlord would acquire a right to sue the trespasser even during the currency of the tenancy, as otherwise on the expiry of the statutory (period the title of the trespasser would become complete not only against the tenant but against the landlord also. We, therefore, do not agree with Mr. Mukherjee that in the case at hand the landlord can not have any right to sue the alleged trespasser, for whether or not he has such a right would depend on the nature and extent of the adverse possession which can not be determined at this stage. We accordingly repel the contention of Mr. Mukherjee that the trial Court acted illegally or with material irregularity in allowing the amendment.

7. We are aware that there are authorities for the view that, if an amendment is otherwise permissible, being necessary for the purpose of bringing on record the whole of the controversy in its entirety and to the full extent, the Court should allow the amendment without attempting to decide the merits or demerits of the

proposed amendment at that stage. Preference may be made to the decision of the Madras High Court in *M.K. Krishna Rao v. Sri Gangadeswarar* (A.I.R. 1949 Mad 433) where Panchapakesa Ayyar, J., discountenanced the Court's giving finding on the allegations in the intended amendment without first allowing the same. Reference may also be made to a much later decision of the same High Court in [T.P. Palaniswami and Another Vs. Deivanaiammal and Others](#), where relying on *M.K. Krishna Rao* (supra), it has been held (at 20) to be well settled that while deciding an application for amendment, the Court is not supposed to go into the merits and demerits of the amendment and express an opinion one way or the other. That, it has been pointed out, should be subject matter of scrutiny after the amendment is allowed and after the defendant files the additional written statement and, after appropriate issue or additional issue is framed therefore. With respect, we are inclined to think that the proposition has been stated in the aforesaid Madras decisions rather too broadly. If it were necessary for us to decide the question, we would have held that while considering an application for amendment a Court may, and in a proper case should, decide the question as to the maintainability of the case sought to be introduced by the proposed amendment. If, for example, the case sought to be introduced by the proposed amendment is such that its cognizance by the Court is barred by express declaration or irresistible implication and such bar stares at the face, the Court, we would have held, should disallow the amendment at that very stage instead of allowing the amendment and then waiting indefinitely for the additional written statement to be filed, appropriate issue to be struck and all that, and then pronouncing, after a considerable lapse of time, as to the maintainability of the case introduced by the amendment long before. But we need not pursue this aspect any further as we have already held that this revision fails as it does not involve any jurisdictional question as required by Clauses (a), (b) or (c) of Section 115(1), nor does it satisfy any of the two further conditions as required by the proviso added to Section 115(1) by the Amendment Act of 1976 in respect of orders "made in the course of a suit or proceeding".

8. The Revision accordingly fails and the application is dismissed with cost assessed at thirty Gold Mohur.

Ajit Kumar Nayak, J.

9. I agree.