(2008) 12 CAL CK 0027

Calcutta High Court

Case No: C.O. No. 1723 of 2006

Trilochan Das		APPELLANT
	Vs	
Krishna Dutta and Others		RESPONDENT

Date of Decision: Dec. 23, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Hon'ble Judges: Partha Sakha Datta, J

Bench: Single Bench

Advocate: D.S. Mallick, B.N. Jaiswal and S. Gangopadhyay, for the Appellant; Saptangsu Basu, Ayan Banerjee, M.M. Chanda and Arindam Chatterjee, for the Respondent

Final Decision: Dismissed

Judgement

Partha Sakha Datta, J.

Ejectment Suit No. 1119 of 1984 was instituted by the plaintiffs-opposite parties against the present petitioner for eviction from the suit premises on the ground of default. The defendant-petitioner entered appearance and filed written statement. The suit is being now proceeded with. An application under Order 6 Rule 17, CPC read with Section 151, CPC was taken out by the plaintiff-opposite parties for insertion of following :-

That the defendant has sublet, transferred and/or assigned the major portion of the suit premises to different persons without the knowledge and consent of the plaintiffs after the promulgation of West Bengal Premises Tenancy Act, 1956 and as such the defendant shall not be entitled to any protection against eviction.

2. In the written objection of the defendant-petitioner it was contended that his father was the original tenant under one Jaladhinath Sadhu prior to coming into force of the West Bengal Premises Tenancy Act, 1956 and on the death of his father he along with his brothers and sisters and mother inherited the tenancy. His father during the life-time of himself and the said Jaladhinath Sadhu inducted subtenants

in the suit property with verbal consent of the said Jaladhinath Sadhu prior to coming into force of the West Bengal Premises Tenancy Act, 1956 and not after promulgation of the said Act or after the institution of the suit. Sub-tenancy of some of the persons were made known to the plaintiffs by a letter dated 31st March, 1977 and it was also replied to. Thus, the suit was instituted 1984 knowing full well of existence of subtenants in the suit property before the year of 1984.

3. One Digambar Das said to be the brother of the present petitioner Trilochan Das was added as a party defendant No. 2 under Order 1 Rule 10 of the CPC and in his written objection he opposed the amendment. It was his case that the new ground of subletting was a fabricated one.

4. The learned trial Court having allowed the petition of amendment, the petitioner-defendant No. 1 assails the order dated 2nd September, 2005 on the ground that the learned Court below failed to exercise jurisdiction vested in law by not holding that the said application would certainly change the nature and character of the suit, that the plaintiffs-opposite parties waived their right to file the suit on the ground of subletting by not bringing this ground much earlier particularly when there was High Court''s direction for disposal of the suit within six months which expired long ago.

5. Mr. D.S. Mallick, learned Advocate appearing for the petitioner at the outset of hearing submits that proposed amendment comes within the mischief of the proviso to Order 6 Rule 17, CP.C which reads thus:-

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

6. It is submitted then that as in 1977 the plaintiffs were made known of the existence of sub-tenancy it cannot be said that the opposite parties/plaintiffs could not discover the fact in spite of due diligence. In this connection the decision reported in Manoj Sharma Vs. State and Others, have been cited. In Manoj Sharma Vs. State and Others, the amendment of the written statement was refused on the ground that the appellants were lacking bona fide and that the amendment seeks to introduce a totally new and inconsistent cause, apart from the fact that the matters were well within the knowledge of the appellants. Here in the instant case the alleged early knowledge of the plaintiff is disputed and no inconsistent. plea has been raised. In Md. Idris Ali Mullick v. Abdur Rahim Mondal, reported in (2004)2 Cal LJ (Cal) 428 the amendment of the written statement was refused on the ground that the proposed amendment was inconsistent with the stand taken in the written statement. These two decisions were in the context of the facts of the respective cases which are not identical with the case under consideration.

7. Mr. Basu, learned Advocate appearing for the opposite parties/plaintiffs submitted that the object of amendment is to ensure that the real controversy

between the parties is adjudicated upon, and the avoidance of multiplicity of proceeding is one of the objectives of amendment. The proviso was added to Order 6 Rule 17, CPC by the amending Act 46 of 1999 with effect from 01.07.2000. It does not relate back to any date prior thereto, as such the alleged knowledge of the plaintiffs of sub-tenancy in 1977 is of no consequence. The impugned order further does not reveal that the trial has already commenced. It is the plaintiffs submission through their learned Counsel that knowledge of subletting dawned upon them only after 17th of January, 2003. In such circumstances, when the plaintiffs-opposite parties deny and dispute the commencement of knowledge prior to January 2003 it cannot be decisively held that knowledge dawned on the plaintiffs in 1977. The matter of the fact is that in the written objection of the defendant there was no denial of sub-tenancy. It is the case of the defendant that sub-tenancy was created in favour of some persons prior to promulgation of West Bengal Premises Tenancy Act, 1956 and not after the promulgation of that Act or not during the pendency of the suit. Whether sub-tenancy was created prior to coming into force of West Bengal Premises Tenancy Act, 1956 or after the enactment came into force is a matter to be decided at the trial upon examination of the witnesses for both sides. But in the context of an averment in the written statement of existence of sub-tenancy in the suit premises I do not think that the amendment was wrongly allowed. Avoidance of multiplicity of proceedings is one of the objectives of the amendment. Refusal of the amendment would invite multiplicity of proceedings. The law well settled is that no ground of eviction constitutes cause of action. It is the determination of tenancy upon service of the statutory notice that constitutes the cause of action. The ground of evict ion may not be remaining the same at the commencement of the suit, as with the passage of time some grounds may evaporate and some others may originate. The ground of subletting is one of the grounds of eviction; and regardless of truth or otherwise of the allegation there cannot be any justifiable ground for rejection of the amendment. Learned Advocate for the opposite parties took me in the decisions in Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, and Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, emphasizes the point that the purpose of granting amendment is to sub-serve the ultimate cause of justice and avoid further litigation. It was further held there can be no strait jacket formula for allowing or disallowing an amendment of pleadings as each case depends on the factual background of that case. The learned trial Court does not appear to have committed any wrong in allowing the amendment.

8. The application .is dismissed. The impugned order is affirmed.

9. A copy of this judgment shall be sent to the learned Judge, 6th Bench, Presidency Small Causes Court at Calcutta for information and necessary action.