

(2008) 12 CAL CK 0038

Calcutta High Court

Case No: C.O. No. 1425 of 2008

Sri Krishna Pada alia Kestopada

Santra

APPELLANT

Vs

Sri gunadhar Manna

RESPONDENT

Date of Decision: Dec. 23, 2008

Hon'ble Judges: Partha Sakha Datta, J

Bench: Single Bench

Advocate: T.N. Halder, for the Appellant; A.N. Das, for the Respondent

Final Decision: Allowed

Judgement

Partha Sakha Datta, J.

The Judgment of the Court was as follows:

1. The Title Suit No. 191 of 1996 was instituted by the plaintiff-petitioner before the learned Civil Judge (Junior Division), 1st Court, Sealdah for eviction against the opposite party under the West Bengal Premises Tenancy Act, 1956 on the ground of default, nuisance and annoyance, and reasonable requirement.
2. In the plaint of the suit the plaintiff averred that the plaintiff inherited the suit property on the death of his father who was formerly a recorded thika tenant in the premises No. 14/2 (now renumbered as B/14/2/H/1), Narkeldanga North Road under P.S. Narkeldanga, Kolkata-700 011; and the defendant was a monthly tenant under the plaintiff in respect of 1 R.T. Shed in the same premises at a monthly rental of Rs. 30/- payable according to English calendar month. In Paragraph-5 of the written statement the defendant averred that "the premises is a thika property and let out to different tenants for only income". In Paragraph-7 of the written statement the defendant said that the plaintiff introduced him to be the landlord on the death of his father who was said to be a thika tenant.

3. With the pleadings as above the parties went to the trial. During the pendency of the suit the defendant took out an application under Order 6 Rule 17 C.P.C. to amend the written statement to delete what was stated in Paragraph-5 of the statement. The Paragraph-5 of the written statement contained an averment that the premises is a "thika property" and the said words were sought to be deleted by amendment with the substitution of the words "a rental premises tenancy of the plaintiff under the landlord-owner and this defendant is a premises tenant of the second decree under the plaintiff".

4. The learned Trial Court allowed the application for amendment observing that the version put in the amendment petition was important for proper adjudication of the suit; and to put the words of the learned Trial Court, "definitely ownership is a vital issue in a suit for eviction on the ground of reasonable requirement". Learned Trial Court further observed that "if the amendment is allowed in these factual circumstances the plaintiff shall not be displaced from his position only by virtue of that order".

5. This order dated 8th April, 2008 passed by the learned Trial Court is under challenge.

6. I have heard ML Tarak Nath Halder, learned Advocate appearing for the petitioner and Mr. A.N. Das, learned Advocate for the opposite party.

7. It is the submission of Mr. Halder that the observation of the learned Trial Court that ownership of the property is definitely a vital issue and that by allowing the amendment the plaintiff shall not be displaced from his position are both factually and legally erroneous. It is the submission of Mr. Halder that at no place of the written statement has it been claimed by the defendant-opposite party that the defendant-opposite party himself is a thika tenant in the suit premises; nor has he said or claimed that he is a landlord of the premises. Therefore, there is no point in making the observation that the ownership of the premises is a vital issue in the suit. The second submission of Mr. Halder is that the learned Court was absolutely erroneous in observing that by allowance of the amendment petition the plaintiff is not displaced from his original advantageous possession. Mr. Halder submitted that amendment seeking withdrawal of admission cannot be allowed to the detriment of the interest of the suitor. Mr. Halder in this connection has referred to a decision in Heeralal Vs. Kalyan Mal and Others, and a decision of this Court in Sudhangshu Simal Ghosh v. Ranjit Kumar Das., 1992 (II) CHN 270.

8. Mr. A. N. Das, learned Advocate appearing for the opposite party submitted in reply that in certain situations admission of certain fact may be withdrawn and issues at trial can be raised on relevant documents and not merely on pleadings. It is further submitted by Mr. Das that by the allowance of the amendment of the written statement the plaintiff has not been displaced from his position and the learned Trial Court has not committed any illegality in allowing the amendment of

the written statement. It is submitted by Mr. Das that in Paragraph-7 of the written statement it has been averred by the defendant that the plaintiff is put to the strict proof of the premises being a thika tenancy premises. Mr. Das referred to the decisions in Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, , M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., , Dileep Singh Mehta Vs. Mackinnon Mackenzie and Co. Ltd.,.

9. Law is well settled that amendment of pleadings under Order 6 Rule 17 C.P.C. can be allowed only if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings. The power to allow the amendment is wide and can be exercised at any stage of the proceedings but nonetheless amendment cannot be claimed as a matter of right under all circumstances. This is the legal position enunciated in a catena of judicial decisions. The underlying principle is that the amendment can be accepted only when it is necessary for the purpose of determining the real questions in controversy between the parties. The decision in Panchdeo (supra) does not help the opposite party. Here the plaintiff described himself as son of uterine brother of another person and the word "uterine" was allowed to be deleted on the prayer of the plaintiff. The High Court interfered with the amendment but the Supreme court held that the trial Court was satisfied that in order to effectively adjudicate upon the dispute between the parties amendment of the pleading was necessary. In Estralla Rubber (supra) the proposed amendment was in fact to elaborate the defence case and to take additional plea in support of the defence. Their Lordships held that the proposed amendment was necessary for proper adjudication of the controversy between the parties and to avoid multiplicity of judicial proceedings.

10. The fact of the matter as it appears upon reading the plaint and the written statement is that there is unquestionably a relationship of landlord and tenant between the parties. It is not the case of the defendant that the plaintiff is not his landlord. It is not his case that he is not the tenant. It was the plaint case that the plaintiff's father was a thika tenant and the said thika tenancy has been inherited by the plaintiff on the death of his father. At Paragraph-5 of the written statement there is clear averment that the premises is a thika property and was let out to different persons to augment the income of the plaintiff. Even Paragraph-7 of the written statement does not dispute the plaintiff's case that the plaintiff's father was a thika tenant. In such circumstances, amendment prayed for is that the word "thika tenancy" as was stated in the written statement should be deleted, but the proposed amendment does not say by the deletion of that word what the defendant intended to convey or elaborate or plead with respect to his status by deletion of that word. The learned Trial Court was obviously wrong in holding that ownership was a vital issue in suit for eviction, for it is not the case of the defendant in the written statement or in the proposed amendment that he disputes the ownership of the plaintiff in respect of the suit premises so far as his tenancy under the plaintiff is

concerned. My attention has been drawn to the decision in *Hiralal v. Kalyan Mal & Ors.* (supra) where their Lordships held that the amendment partaking of the character of displacing the plaintiff's case is not permissible. This decision relied on [Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.,](#) where it was observed that an inconsistent plea displacing the plaintiff completely from the admission made by the defendant in the written statement cannot be allowed. The *Modi Spinning and Weaving Mills Co. Ltd.* (supra) and the decision in *Panchdeo* (supra) were followed by this Court in *Sudhangshu Simal* (supra) where it was observed that the amendment in the nature of withdrawal of an admission having the effect of displacing the plaintiff cannot be permitted.

11. On two-fold grounds the proposed amendment was not necessary. The proposed amendment was purely unnecessary because it was not the claim of the defendant that he disputes the ownership of the plaintiff, vis-a-vis his tenancy in respect of the suit premises. Tenancy under the plaintiff is admitted and the proposed amendment was not necessary for the purpose of adjudication of the real questions in controversy between the parties. The question whether the plaintiff is a thika tenant or not does not appear to be the subject-matter of the suit. The subject-matter of the suit was eviction of the defendant who admittedly and expressly claimed to be a tenant under the plaintiff. Secondly, the written statement unquestionably admitted the plaintiff to be a thika tenant. If in the course of trial the plaintiff himself deviates from his stand then it is for the trial Court to decide as to what would be the effect of departure from the stand in the pleading, and the defendant will be entitled to cross-examine the plaintiff.

12. The application is allowed. The order dated 8th April, 2008 passed by the learned Trial Court is set aside. A copy of this judgment shall be sent to the learned Civil Judge (Junior Division), 1st Court, Sealdah for information and necessary action.