

(1989) 03 CAL CK 0051

Calcutta High Court

Case No: C.O. No. 1695 of 1988

Nilkantha Banerjee

APPELLANT

Vs

Secretary, Chittaranjan Sporting
Club and Others

RESPONDENT

Date of Decision: March 20, 1989

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, Order 6 Rule 17

Citation: (1989) 1 CALLT 383 : 93 CWN 1125

Hon'ble Judges: Kalyanmoy Ganguli, J

Bench: Single Bench

Advocate: S. Mitra, for the Appellant; Asoke Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Kalyanmoy Ganguli, J.

This is an application u/s 115 of the Code of Civil Procedure. In this application as Order passed on 20th June, 1988 by the Learned Munsif, Additional Court, Srirampur, in Title Suit No. 9 of 1988 has been challenged.

The petitioner filed a suit for declaration of title and permanent injunction against the opposite parties Nos. 1 to 3 in the First Court of Munsif, Srirampur being Title Suit No. 142 of 1984 and the said Suit, subsequently on transfer to the Court of the Learned Additional Munsif, was re-numbered as Title Suit No. 9 of 1988.

3. The case of plaintiff petitioner as described in paragraph 2 of the petition is as follows :

(a) That the petitioner was the owner of the property mentioned and fully described in the Schedule "A" to the plaint and he got the property by way of inheritance.

(b) That the plaintiff/petitioner was the recorded tenant on demise of late Ramprasad Banerjee (Bhattacharjee) the Plaintiff/petitioner as his sole heir inherited

the scheduled property and both in B.S. record- of-Rights the name of the father of the plaintiff/petitioner has been, duly recorded.

(c) That the plaintiff/petitioner was/is in peaceful possession of the suit property for long years but his possession was/is being disturbed by the Defendants/Opposite Parties Nos. 1 to 3.

(d) That the defendants/opposite parties Nos. 1 and 2 with some other boys and/or some other members of the alleged club was trying to play over the suit property. The opposite parties No. 1 to 3 wanted to use the same as their play-ground of the alleged club and they were canvassing that the suit properties were no man's land and the plaintiff/ petitioner was not the owner of the same.

(e) That the defendants/opposite parties No. 1 to 3 had no right and/or locus standi, interest in the suit property and they had no right to canvas that the Suit properties were no man's land; nor they had any right to dispossess the plaintiff/petitioner ; nor they had any right to do anything prejudicial to the interest of the parties; nor the defendants/opposite parties had any right to obstruct the plaintiff/petitioner's peaceful enjoyment of the Suit property.

4. The defendants opposite parties No. 1 to 3 have entered appearance in the said suit and are contesting it, inter alia, on the ground that the said opposite parties have acquired title to the Suit property by way of adverse possession for more than 12 years and that the plaintiff petitioner had no possession in the Suit property and that the Suit property is used as a play ground.

5. After filing the plaint, the plaintiff/petitioner filed an application for temporary injunction under Order 39 Rules 1 and 2 of the CPC for restraining the defendants opposite parties No. 1 to 3 and/or their boys under their guidance for causing any sort of disturbance to the plaintiff's /petitioner's peaceful possession and enjoyment of the Suit property and also for restraining the said defendants from doing any act prejudicial to the interest of the plaintiff/petitioner.

6. The application of the plaintiff for temporary injunction was contested by the defendants/opposite parties contending, inter alia, that as the plaintiff petitioner had not filed the Suit for recovery of possession, the application for injunction was liable to be rejected. The learned Munsif by Order No. 43, dated the 23rd February, 1987 was pleased to dispose of the application for injunction by directing the parties to maintain status quo regarding the Suit property till the disposal of the Suit.

7. Thereafter the plaintiff petitioner filed an application under Order 6 Rule 17 read with Section 115 of the CPC praying for amendment of the plaint on the ground mentioned therein. A copy of the said application for amendment of the plaint has been annexed to this revisional application marked with the letter "A".

8. The plaintiff petitioner filed another application under Order 1 Rule 8 of the CPC praying, inter alia, for permission to plead the defendants to be represented by the

members on the ground stated therein. A copy of the said application has also been annexed to this revisional application and marked with the letter "B".

9. The defendants opposite parties No. 1 to 3 contested both the applications by filing written objections contending, inter alia, that the plaintiff petitioner has no right to file the aforesaid application and the proposed amendment was going to introduce a new case and would change the nature and character of the Suit. It was further contended by the opposite parties that the petition under Order 1 Rule 8 of the CPC was a premature one.

10. By the Order impugned in this application the Learned Court below was pleased to reject both the application holding, inter alia, that the application for amendment of the plaint would change the nature and character of the Suit itself.

11. After going through the materials on record and after hearing the arguments advanced by the Learned Advocates of both the parties the following points emerge :

(a) The main grievances of the plaintiff/petitioner in the Suit is that he is the owner of the plot in question and that the defendants have raised a cloud over such ownership of the plaintiff/petitioner.

(b) The defendants-opposite parties had in fact, admitting that originally the plaintiff was the owner of the disputed property but that the Club had acquired title over the same by adverse possession;

(c) It transferred from the objection to the application for injunction that the Club was a duly registered Club;

(d) The real purpose of the Suit is to get back both ownership and possession of the Plot of land in dispute and the formal refraining of the pleadings have been necessitated by the statements made by the defendants/opposite parties;

(e) It is common knowledge that if the Club is a registered Body then it should be impleaded in its own name as the Secretary and/or the President of the Club cannot represent the Club itself and any decree obtained against such Secretary and/or President may not necessarily bind the Club;

(f) Members of such Clubs are generally a floating body of local people;

(g) It is pleaded that some of the members of the Local Public are aiding and abetting the acts and deeds perpetrated by the members of the Club ;

(h) The Order impugned is rather cryptic and does not disclose as to how the nature and character of the Suit will change if the proposed amendments are allowed and the application under Order 1, Rule 8 of the CPC is allowed.

12. It, is to be noted in this connection that a Suit is not a moot or a debate but is a sincere attempt to arrive at the truth and a pragmatic approach to find out such

truth is necessary. Truth should not be permitted to be entangled in the web of technicalities. It is further to be noted that procedure is but the handmaiden of justice and cannot be permitted to become its jealous mistress. One should also remember that pleading itself is not tantamount to proof. Even if the applications are allowed, still in order to be able to obtain a decree, the plaintiff has to prove his case. Indian courts have consistently held that applications for amendments of plaint are to be liberally construed and allowed. Citations of precedent will amount to emphasising the obvious.

13. For reasons stated above, I am of the opinion that the Learned Court below acted with material irregularity in the exercise of the jurisdiction vested in it by law and failed to exercise the jurisdiction vested in it by not allowing the applications.

14. In the circumstances, this application succeeds. The Order impugned in the application is set aside. Both the application for amendment of the plaint under Order 6, Rule 17 and the application under Order 1, Rule 8 are allowed.

15. There will, however, be no Order as to costs.