

(1975) 12 CAL CK 0030

Calcutta High Court

Case No: Civ. Rev. Case No. 3532 of 1974

Dwarka Prosad Mahawar

APPELLANT

Vs

Gopal Das Mahawar and Others

RESPONDENT

Date of Decision: Dec. 4, 1975**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115
- Transfer of Property Act, 1882 - Section 108
- West Bengal Premises Tenancy Act, 1956 - Section 13, 17(2), 17(2A)(b), 17(4)

Citation: 80 CWN 269**Hon'ble Judges:** R. Bhattacharya, J**Bench:** Single Bench**Advocate:** M.C. Surana, for the Appellant; Barun Kumar Roy Chowdhury, for the Respondent

Judgement

R. Bhattacharya, J.

This revisional application u/s 115 of the CPC has been filed against an order dated 12.8.74 passed by a Judge of the City Civil Court, Calcutta, in Ejectment Suit No. 78 of 1973 allowing an application for amendment of the plaint. The petitioner is the defendant Dwarka Prosad Mahawar. In the original suit the plaintiffs prayed for the eviction of the defendant, a tenant of theirs in respect of the suit premises on the ground of default in payment of rents. The defendant appeared in the suit and filed an application under sections 17(2) and 17 (2A) (b) of the West Bengal Premises Tenancy Act, 1956 and the court passed necessary orders upon that application. During the pendency of the suit, an application for amendment of the plaint was filed for incorporating in the plaint that the defendant without the knowledge, consent and permission of the plaintiffs erected permanent structure by construction and that he was constructing certain rooms on some space of the premises and thereby violated the provision of Clause (b) of Section 108 of the Transfer of Property Act, 1882, and as such the defendant was also liable for eviction

from the suit premises. From the reading of the allegation it appears that the plaintiffs meant Clause (b) of Section 13 of the West Bengal Premises Tenancy Act which was violated by the tenant. The defendant failed to pay any heed to the warning of the plaintiffs and went on with the construction stated to be illegal. The defendant neglected to demolish the construction already made. The plaintiffs added certain prayers including mandatory injunction for demolition of" the alleged new construction and also permanent injunction restraining the defendant and his agents etc. from making any further work of construction. The learned Judge of the City Civil Court on hearing the parties allowed the prayer for amendment of the plaint on the ground that the proposed amendment would not introduce any new case and that unless the prayer was allowed, there would be multiplicity of suits. Against that order allowing amendment the present application has been filed.

2. I have heard Mr. M. C. Surana, the learned Advocate for the petitioner and Mr. Roy Chowdhury for the opposite party-plaintiffs. It has been contended by Mr. Surana that the addition of a new ground for eviction in the plaint will change the character of the suit due to the inclusion of a new cause of action coming into existence after the filing of the suit. Mr. Roy Chowdhury on the other hand has contended that the addition of a new ground for the eviction of the tenant will not change the nature of the suit and to avoid multiplicity of suits, the learned Judge below acted rightly by allowing amendment. For the amendment of pleadings the provision in Order 6 Rule 17 of the C.P. Code is relevant for our consideration in the instant case. It says that the court may at any stage of the proceedings allow amendment of the pleading of a party to the suit in such manner and terms as would be thought just and that amendment shall be allowed as would be deemed necessary for the purpose of determining the real question in controversy between the parties. In the present case from the allegations made, it is quite clear that originally the ground of eviction was under Clause (i) of sub-section (1) of section 13 of the West Bengal Premises Tenancy Act, 1956 but by amendment the plaintiffs want to add another ground according to the provision of clause (b) of sub-section (1) of section 13 of the said Act. For the default in payment of rent on the part of the defendant, the plaintiffs determined the tenancy by a notice to quit and, according to their allegation, during the pendency of the suit the further ground sought to be incorporated in the plaint arose due to the alleged illegal construction by the defendant without the knowledge, consent and permission of the plaintiffs. This is no doubt a fact subsequent to the institution of the suit. This ground is also taken by the plaintiffs for the eviction of the tenant. The suit remains an ejectment suit. The plaintiffs want to add another ground for the eviction of the tenant. Whether that ground is based upon evidence or not is a different matter to be considered at the time of hearing of the suit. The introduction of a new ground, besides the ground already taken for eviction of the tenant, does not change the character of the suit. Rule 17 of Order 6 of the C.P. Code says that the court may allow amendments which would be found necessary for the purpose of determining the real question in

controversy between the parties. The real question in the present suit is whether the defendant is liable to be evicted according to the provision of law. According to the provisions of the West Bengal Premises Tenancy Act there are several grounds for eviction. The ground sought to be added by the plaintiffs is no doubt relevant to see whether the defendant is liable to be evicted. Of course the facts which are alleged to be the basis for the added ground came into existence subsequent to the filing of the suit. If the facts are really true, then certainly the plaintiffs can evict the defendant on the added ground. But, if that ground is not available to the plaintiffs, and in case the plaintiffs' ground already taken in the plaint fails for some reason or other, then the plaintiffs have to file another suit subsequently on the facts stated in the petition for amendment. This procedure will not only give rise to the multiplicity of suits, but this will also cause harassment to both the parties, wastage of time, unnecessary expenses to the parties and also abuse of the processes of Court. This can be avoided if the subsequent amendment taken by the plaintiffs be allowed to be considered in the present suit along with the other ground already taken. If the proposed amendment is allowed, there will be no hardship to the defendant, neither any injustice would be done to him if he is allowed to file additional written statement as against those allegations and to challenge the facts at the time of trial by adducing appropriate evidence rebutting the materials to be produced, if at all, by the plaintiffs.

3. In this connexion several decisions were brought to my notice and Mr. Surana in particular relied upon a decision of N. C. Mukherjee, J. in the case of Arun Kumar Chatterjee v. Karuna Rakshit, reported in 78 C.W.N. 572. There can be no doubt that the power given to the Court under Rule 17 of Order 6 of the C.P. Code for amendment of pleadings is discretionary and is based upon judicial discretion for the best interest of the parties and for coming to a just decision determining the real and substantial disputes between the parties. It has got to be seen that by such amendment no injustice is done to the other side. In this connexion the principles laid down by the Supreme Court in the case of Pirgonda Hongonda Patil v. Kolgonda Sidgonda Patil (A.I.R. 1937 S.C. 363) may be looked into. In the case of [Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others](#), the Supreme Court held :-

Amendment is discretionary matter and although amendment at a late stage is not to be granted as a matter of course, the Court must lean in favour of doing full and complete justice in the case where the party against whom amendment is to be allowed can be compensated by cost or otherwise.

In another part it has been held:--

As we have shown above there is good authority in support of the proposition that subsequent events may be taken note of if they tend to reduce litigation.

The Supreme Court also discussed some principles of law relating to the amendment of pleadings in the case of [Jai Jai Ram Manohar Lal Vs. National Building](#)

[Material Supply Gurgaon,](#) . It has been held that the Court always gives leave to amend the pleading of a party, unless it is satisfied that it is a case of malafide. With regard to the case of Arun. Kumar Chatterjee (78 C.W.N. 672) relied upon by Mr. Surana, I should only say that in that case it appears from the judgment that the additional ground taken by the plaintiff by way of amendment were held not to be bonafide and the facts are not the same as we find in the instant case. I Can not hold that the decision arrived at by Mr. Justice Mukherjee in that case can be applied here.

4. Mr. Roy Chowdhury also relied upon an unreported decision of Chitto-tosh Mukherjee, J. in C.R. No. 133 of 1975 disposed of on 10.9.75. That was also a case relating to the ejectment of the tenant. Originally the suit was started on the ground of default in payment of rent, but subsequently an amendment was sought for adding a ground of sub-tenancy by the tenant. In that case the decision of N. C. Mukherjee, J. was referred to and was considered along with other cases, Chittotosh Mukherjee, J., however, distinguished the case of Arun Kumar Chatterjee and held that the ground of subletting could be allowed to be taken by the landlord by amendment. The fact of that case does not show that it was a case of additional ground arising after the suit.

5. My attention has also been drawn to a Full Bench decision of the Delhi High Court in Abinash Kaur v. Abinash Nayyar published in AIR 1975 D el 46. In this case the question arose whether a ground of eviction coming into existence after the filing of the suit could be taken by the plaintiff by amendment of the plaint and it was held after consideration of a large number of decisions that ordinarily the plaintiff's case is restricted to the original cause of action pleaded, but to avoid a multiplicity of suits, subsequent events may also be allowed to be pleaded during the pendency of a proceeding by an amendment of the plaint.

6. On consideration of the Supreme Court decisions and the principles already discussed above, I hold that the learned Judge of the City Civil Court was justified in allowing the petition for amendment in the facts and circumstances of the case.

7. Mr. Surana has made an attempt to argue, though not strenuously, that when the defendant has already deposited the arrears of rent as directed by the court and as he is entitled to get protection u/s 17 (4) of the West Bengal Premises Tenancy Act, the inclusion of additional ground will mean that the defendant will be deprived of the benefit of the privilege u/s 17 (4). I cannot appreciate this branch of argument with regard to the ground relating to the arrears of rent. At the proper time the court will consider whether the defendant would be entitled to get any protection as indicated, but that will be in respect of the ground for default in payment of arrears. With regard to the other ground taken by the plaintiffs, that will be considered on merit. The privilege u/s 17(4) has got no connection with other grounds. The second point taken by Mr. Surana has no value.

8. In this revisional application u/s 115 of the C.P. Code, I find no reason to interfere with the decision of the court below. The discretionary power has been rightly exercised and the said decision cannot be interfered with in revisional application when I do not find any illegality or material irregularity in the exercise of the court's jurisdiction. There has been no argument regarding the exercise of a wrong jurisdiction by the court or any failure of the court below to exercise a jurisdiction so vested. I do not find any ground relating to the three clauses mentioned in section 115 of the C.P. Code. In the result, the revisional application fails and the Rule stand discharged without any cost.

The interim order granted in the Rule is vacated. Let the records go down to the court below as quickly as possible so that the court can proceed with the suit according to law.