courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 09/11/2025

(2013) 06 CAL CK 0056

Calcutta High Court

Case No: C.O. No. 2099 of 2010

Bedana Sur		APPELLANT
	Vs	
Nirod Chandra Seal		RESPONDENT

Date of Decision: June 27, 2013

Citation: (2013) 4 CHN 594

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Sanghamitra Nandy, for the Appellant;Bikash Kumar Chattopadhyay, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.
Heard learned Advocates of both the sides. This application is at the instance of the plaintiffs and is directed against the Order No. 153 dated April 16, 2010 passed by the learned Civil Judge (Junior Division), Barrackpore in Title Suit No. 824 of 2000 thereby rejecting an application under Order 6 Rule 17 of the CPC for amendment of the plaint.

2. The petitioners instituted the aforesaid suit for declaration that they are the absolute owners of the property mentioned in the schedule to the plaint, permanent injunction and other reliefs.

3. The defendant is contesting the said suit by filing an appropriate written statement contending, inter alia, that he is the owners of the suit property and that the predecessor of the plaintiffs paid rent to the defendant and so, after the death of the predecessor of the plaintiffs present plaintiffs have become tenants under the defendant and that they have defaulted in payment of rent.

4. Issues have been framed accordingly and both the parties have adduced evidence on the basis of the issues framed. Thereafter, the suit has been fixed for hearing argument over the suit and, in fact, the argument has been heard in part. At this stage the plaintiffs

have filed the application for amendment of the plaint as per Annexure P-3 at Page No. 21 to the application.

5. Upon due consideration of the application its objection and the pleadings of both the parties, the learned Trial Judge has rejected the said application holding, inter alia, that proposed amendments are of such a nature that it cannot be presumed that the plaintiff did not know those facts or would not have known those facts with due diligence at the time of the commencement of the trial. Accordingly, the said application is hit by the proviso to Order 6 Rule 17 of the CPC and is rejected by the learned Trial Judge. Being aggrieved, this application has been preferred.

6. I have considered the decision of 2007(3) ICC 597 of Calcutta High Court filed by the learned Advocate for the opposite party.

7. Having heard the learned Advocates of both the sides and on perusal of the materials on record, I am of the view that the learned Trial Judge has reached at a correct conclusion. The said suit was filed in the year 2000 and the amendment was sough for after 10 year from the date of filing of the suit, when both the parties had already adduced evidence in support of their respective contentions. If I look at the application for amendment of the plaint, it appears that there is a total change in the schedule of the plaint.

8. While the original plaint lays down that the schedule Lot No. 1 comprises, inter alia, Dag No. 161 consisting of 4 small rooms and 1 big room upon the land measuring 8 1/2 decimal of land out of total land measuring 2025 decimal of land, now, by the proposed amendment, so far as Lot No. 1 is concerned, the petitioners have contended that they are claiming ownership right over 1 decimal of land more or less, and there will be 1 room only instead of 4 rooms as indicated above.

9. Amendment has also been sought for in respect of Lot No. 2 contending, inter alia, that there would be 4 1/2 decimal of lands with present 5 rooms though the original plaint lays down the existence of 7 rooms.

10. Not only that, by the proposed amendment, the petitioners have wanted to incorporate the Paragraph No. 4(a) contending, inter alia, that the predecessor of the plaintiffs had released 7 1/2 decimal of land to one Paritosh Banerjee, Maniklal Dey and others and some portion was acquired by the Government for making a Fari for cows and other changes.

11. Thus, I find that though the character of the suit remains the same, by the proposed amendment, the nature of the suit including the reliefs sought for over the suit property is bound to be changed. Since the parties have already adduced evidence over the suit properly as described in the schedule to the plaint, if the proposed amendment is allowed, certainly, the nature of the suit vis-■-vis the suit property would be changed and in such circumstances, the opposite party would be prejudiced and such prejudice, in my view,

cannot be compensated by costs.

12. The amendment would naturally invite additional written statement, framing of issues on the facts which is alleged to have happened long time back before the date of filing of the suit. So the amendment would naturally call for factual question of old facts leading to re-opening of the suit again, When the schedule of the suit property is changed thoroughly, amendment as proposed, will cause the change of the basic structure of the plaint. No justified reasons have been forwarded for amendment. The amendment, in my view, is not for fair adjudication of the suit at all.

13. Accordingly, I am of the opinion that the learned Trial Judge has rightly rejected the prayer of the plaintiff though on a different ground. Anyway, in my view, the conclusion arrived at by the learned Trial Judge is correct. So, there is no scope of interference at the belated stage.

14. Accordingly, the application is dismissed.

15. Considering the circumstances, there will be no order as to costs. Urgent Xerox certified copy, if applied for, be given to the learned counsel for the petitioner upon compliance of necessary formalities.