

(2014) 05 CAL CK 0065

Calcutta High Court

Case No: C.O. No. 4019 of 2005

Ramjatan Rabidas

APPELLANT

Vs

Jatin Rabidas

RESPONDENT

Date of Decision: May 2, 2014**Citation:** (2014) 4 CALLT 187**Hon'ble Judges:** Subrata Talukdar, J**Bench:** Single Bench**Advocate:** Partha Sarathi Bhattacharyya and Raju Bhattacharyya, Advocate for the Appellant

Judgement

Subrata Talukdar, J.

Sri Partha Sarathi Bhattacharyya, learned counsel, appears on behalf of the petitioner. In terms of the previous order of this court dated 7th of April, 2014 directing the petitioner to serve notice afresh on the opposite party, Sri Bhattacharyya produces affidavit of service in court today. On the said affidavit of service it appears that notice of CO 4019 of 2005 has been served on the sole opposite party along with a copy of the same. Such notice is also acknowledged as received. Affidavit of service is taken on record.

2. In spite of such service, none appears on behalf of the opposite party even today when the matter is taken up for consideration.

3. Sri Bhattacharyya, by filing CO 4019 of 2005 challenges the judgment and order impugned dated 6th of January, 2003 passed by the learned Additional Civil Court, (Junior Division). Raiganj, Uttar Dinajpur in Title Suit No. 43 of 1999. He submits that his client being wrongly advised had challenged the order impugned dated 6th of January, 2003 before the learned Additional District Court, Fast Track 1st Court, Uttar Dinajpur at Raiganj by filing civil revision No. 04 of 2003 which has also been decided against the petitioner-plaintiff by the order of the first revisionist court dated 20th of July, 2005.

4. Sri Bhattacharyya submits that in view of such decision by the first revisionist court, both the orders of the learned trial court and the learned first revisionist court have been included in CO 4019 of 2005, although his primary challenge is to the order impugned dated 6th of January, 2003 of the learned trial court.

5. Sri Bhattacharyya further submits that the learned first revisionist court did not interfere with the order impugned dated 6th of January, 2003 passed by the learned trial court only on the point of maintainability of the revision. In the opinion of the learned first revisionist court the interlocutory order passed by the learned Trial Court was not subject to revision under the statute.

6. However the order of the learned trial court, according to Sri Bhattacharyya, is legally untenable inasmuch as the amendment sought for by the present petitioner-plaintiff ought to have been allowed.

7. Sri Bhattacharyya candidly submits that the order of the learned first revisionist court deciding the point of maintainability of the revision is not the subject-matter of challenge in CO 4019 of 2005.

8. Taking this court through the amendment proposed by the petitioner-plaintiff, Sri Bhattacharyya states that on coming to learn of the fact that the defendant in collusion with the local B.L. & L.R.O. was trying to incorporate his name in the record of rights of the suit property and thereby creating a new schedule of property identified as schedule 3(a), it was necessary that the petitioner-plaintiff be allowed to incorporate the new schedule to the suit property in his plaint.

9. Learned counsel points out that such collusive recording in the suit property by the opposite party-defendant is prejudicial to the declaration of the right, title and interest of the petitioner-plaintiff as claimed in the suit and therefore, the petitioner-plaintiff should be allowed to assail the same by way of an amendment.

10. Sri Bhattacharyya also submits that the order dated 6th of January, 2003 shows utter non-application of mind by the learned trial court. According to him, the learned trial court has erroneously held that the plaint was already amended to such effect on an earlier occasion. Sri Bhattacharyya submits that such a finding of the learned trial court is wrong on the face of the record and no such amendment was carried out by the petitioner-plaintiff to the plaint.

11. He relies upon a decision of this court in [Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others](#), in support of the proposition that amendments should be allowed by courts to determine the real question in controversy. In the said decision the Hon"ble Apex Court was of the view that the amendments to pleadings should be liberally allowed and the court should take notice of subsequent events to preserve and safeguard the rights of both parties and to subserve the ends of justice.

12. Heard. Considered.

13. This Court finds substance in Sri Bhattacharyya's contention that the amendment proposed is necessary to determine the real controversy between the parties. The suit, being one for declaration of title, it is necessary that the petitioner-plaintiff be allowed to agitate any change arising out of a subsequent recording of the suit premises to his prejudice to the notice of the learned trial court.

14. It is judicially settled that unless the petitioner-plaintiff be allowed to incorporate the changes to the suit premises being allegedly made behind his back which come to his knowledge subsequently, the petitioner-plaintiff is likely to suffer prejudice at the time of hearing and, the period of litigation is likely to expand.

15. Accordingly, this court is in unison with the arguments advanced by Sri Bhattacharya and allows the petitioner-plaintiff to carry out the proposed amendment to the plaint in Title Suit No. 43 of 1999.

16. Needless to state, the opposite party-defendant shall have the right to file additional written statement to the amended plaint and the learned trial court shall thereafter proceed with the suit in accordance with law.

17. The order impugned dated 6th of January, 2003 is set aside.

18. CO 4109 of 2005 is allowed.

19. There will be, however, no order as to costs. Since the suit is of 1999, the learned trial court is directed to dispose of the same on its own merits preferably within a period of six months from the date of communication of this order subject to its calendar without granting any unnecessary adjournment.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.