
(2016) 2 ICC 156

CALCUTTA HIGH COURT

Case No: C.O. 3263 and 3264 of 2013

Nirmal Chandra Sarkar
and Others

APPELLANT

Vs

Md. Jiyaul Haque

RESPONDENT

Date of Decision: Feb. 10, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Constitution of India, 1950 - Article 227
- West Bengal Land Reforms Act, 1955 - Section 13 (1)(ff), Section 14 (2), Section 14(2), Section 8

Citation: (2016) 2 ICC 156

Hon'ble Judges: Indrajit Chatterjee, J.

Bench: Single Bench

Advocate: Deblina Lahiri, for the Appellant; Sabyasachi Bhattacharyya, Debjit Mukherjee, Ranabir Roy Chowdhury, Supratick Syamal and Prasun Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Indrajit Chatterjee, J.

1. With the consent of the parties, I am hearing both the civil orders being C.O. No. 3263 of 2013 (Nirmal Chandra Sarkar Another - Versus- Md. Jiyaul Haque) and C.O. 3264 of 2013 (Nirmal Chandra Sarkar Another -Versus- Shanti Ranja Bhawal & Ors.) as common fact and law is involved.

2. This application under Article 227 of the Constitution of India has been filed by the present petitioners in Misc. Case Nos. 112 and 113 of 2000 respectively as against the Order No. 109 dated 11-7-2013 and Order No. 18 dated 11.07.2013 both passed by the learned Civil Judge (Junior Division), Kalyani, District-Nadia, in which the learned trial court declined to concede to the prayer of the petitioners to amend a portion of the petition and to introduce some new paragraphs therein.

3. The fact of this case can be stated in brief thus:

4. That the present petitioners filed the respective suits before the learned Civil Judge (Junior Division), Kalyani, District-Nadia, stating, inter alia, that they are the co-sharers and also contiguous land owners of the case land and as such, they have acquired a right of preemption. It is further case of the petitioners in both the cases that the subject matter of the case is 2.4 decimal of land out of 2.95 of land, out of 51 decimal of land in R.S. Plot No. 972 in Mouza - Birohi, Police Station - Haringhata, District - Nadia. The L.R plot No. being 1204.

5. It has been claimed by the petitioners that out of that 51 decimal of the case land, R.S. Plot No. 972 used to be possessed amicably by the co-sharers for the purpose of convenience and possession of the said plot of land. The present petitioners of both the cases now claim that they purchased the landed property as mentioned in schedule of that application from the predecessors-in-interest of Sudhangsu Kumar Halder. Thus, it is the claim of the petitioners that the petitioners are the co-sharers, the owners and the adjacent land and they had the right of preemption which was denied by Sudhangsu Kumar Halder by way of selling the disputed property to the opposite party vide the deeds in question without allowing the petitioners to exercise their right of preemption.

6. At the time of hearing, it was submitted by Ms. Lahiri, learned Advocate appearing on behalf of the petitioners, that the proposed amendment will not change the nature and character of the case and, in fact, such amendment is necessary due to the changes in law and as per the amendment of the in West Bengal Land Reforms Act with retrospective effect, no partition will be accepted under Section 14(2) of the said Act unless it is by way of instrument or by a decree of court. She cited one decision of the Apex Court reported in , AIR 1969 SC 1267 (Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon) wherein it was held by the Apex Court held that rules of procedure are intended to be a handmaid to the administration of justice and a party cannot refuse just relief because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. It was further observed by the Apex Court that the court always gives leaves to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission, and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. It was further submitted by the learned Advocate appearing on behalf of the petitioners by taking me to the decision of this court reported in , 1978 AIR (Calcutta) 482 (Debabrata Bhowmick v. Sm. Nani Bala Some) wherein the Single Bench of this court passed an order that in that case, the petitioner was allowed to incorporate in the plaint a new ground of vicinage and in that case, the preemption was only filed on the ground of co-sharership.

7. Learned Advocate also relied upon another decision of this court reported in , 2014(4) ICC 189 (Smt. Rebatibala Ghosh & Ors. v. Sri Abhoy Pada De) wherein the Single Bench of this court in an application for preemption in respect of property in which sale transaction took place in the year 1978 approved the proposed amendment to incorporate in the application under Section 8 of the West Bengal Land Reforms Act a new claim on the ground of vicinage.

8. Learned Advocate cited another decision of the Apex Court reported in , AIR 1980 Calcutta 271 (Smt. Ashalata Dey And Ors. v. Kamal Kumar Bose) wherein the Division Bench of this court held that the retrospective operation of the amended provision of Section 13 (1)(ff) as given by Section 13 of the Amendment Act was finally upheld by the Supreme Court which reversed the decision of the Calcutta High Court in , AIR 1971 Calcutta 331. It was further observed that the amendment of the pleading therefore became a necessity as otherwise the suit was likely to fail on the plaintiffs' failure to plead and prove their requirement within the four corners of the amended provision. It was further observed by the Division Bench that by the amendment the plaintiff was not seeking to incorporate any new claim on a new cause of action which on the date he asked for the amendment was barred by limitation. The amendment was necessary in the interest of justice. Under the circumstances the provision of Article 67, Limitation Act could not be invoked."

9. Learned Advocate Mr. Bhattacharyya, appearing on behalf of the opposite party submitted that his client is ready to accept the amendment in respect of item Nos. 2 and 3 but he has strong objection on the amendment as mentioned in Paragraph-1 of both the petitions. He further submitted that if the portion of the amendment noted above is allowed to remain in the amendment petition, then this opposite party has strong grievance in passing this amendment and he submitted that if this portion of the amendment will remain as it is, then the entire nomenclature of the case will be changed. He submitted that the present amendment petition has been introduced by the petitioners just to substantiate the claim of the petitioners.

10. In reply, it was submitted by the learned Advocate for the petitioners that this amendment is necessary to get rid of the rigour of Section 14(2) of the West Bengal Land Reforms Act and as such, due to such chance, this amendment is necessary.

11. Some dates are more important in assessing this present application. That this petition under Section 8 of the West Bengal Land Reforms Act was filed on 04-12-2000 and the Section 14(2) of the West Bengal Land Reforms Act was amended with retrospective effect from 07-8-1969.

12. I have gone through the amendment petition which is now being assailed before this court. This court is to see (1) whether the amendment is necessary, (2) whether this amendment will create a new ground for the present petitioner which may cause prejudice to the other side and (3) whether this amendment is necessary because of the

amendment made in the West Bengal Land Reforms Act.

13. The opposite party is eager to give some concession to the petitioner if the portion stated below is taken out of the petition under Order 6 Rule 17 of the CPC that portion may be translated as such "the co-sharers of the predecessor in interest of the petitioner use to possess suit plot No. 972 in absolute interest measuring 52 decimal as recorded before the R.S settlement and the property was divided by the then co-sharers as per oral partition and those co-sharers use to possess the property as per their separate possession.

14. According to me, this sentence even if stays in the main application, it cannot go in favour of the present petitioners as this assertion is against the legislative intent as made in the amendment of section 14(2) of the West Bengal Land Reforms Act. Apart from the prayer for deleting this portion, the present petitioners have tried to introduce in the petition as to how the present petitioners got the suit portion of the said property which they want to pre-empt.

15. I have gone through Section 14 (2) of the West Bengal Land Reforms Act and on scrutiny of the same, this court is satisfied that it was the stipulation of the legislature that no partition can be effected unless it is by a decree of partition or by a registered instrument. Thus it is immaterial whether that sentence as to the oral partition "remains" there or not. I have repeatedly said that as per Section 14(2) of the West Bengal Land Reforms Act such oral partition is not accepted. If that is the legislative intent stated above then whether that clause remains there or not is immaterial.

16. Thus, considering every aspect, this court is satisfied that the amendment sought for became necessary in view of the legislative changes which was not contemplated by the present petitioners when the application under Section 8 of the West Bengal Reforms Act was filed.

17. Thus the impugned order passed by the learned Civil Judge (Junior Division), in Misc. Case No. 112 of 2000 dated 11-7-2013 and Misc. Case No. 113 of 2000 also dated 11.07.2013 are hereby set aside. The prayer for amendment of the petition as made out by the present petitioners before the trial court dated 18.08.2007 are allowed. There will be no order as to costs.

18. Let the petition be amended accordingly.

19. The opposite party will be entitled to file additional written objection, if any, within a month from the date of receipt of the copy of the order by the learned trial court.

20. Thus, the application made under Article 227 of the Constitution of India is hereby allowed on contest without cost. The order passed on 11.07.2013 by the Civil Judge, Junior Division, Kalyani, District Nadia, in Misc. Case No. 112 of 2000 is hereby confirmed.

21. The petitioner is directed to communicate this order to the learned trial court at once.

22. The order passed in C.O. No. 3263 of 2013 will also govern C.O. No. 3264 of 2013 which has arisen out of the order passed by the same court as against the Order No. 109 dated 11-07-2013 arising out of Misc. Case No. 112 of 2000. The said order No. 109 dated 11.07.2013 is hereby confirmed.

23. Let the photostat copy of this order be kept in the record of C.O. No. 3264 of 2013.

24. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis.