
(2016) 3 ICC 595 : (2016) 6 WBLR 638

CALCUTTA HIGH COURT

Case No: C.O. No. 841 of 2016

Mr. Arvind P Shah

APPELLANT

Vs

Mussamat Zohra
Hasani Vadnagarwala

RESPONDENT

Date of Decision: May 18, 2016

Acts Referred:

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

Citation: (2016) 3 ICC 595 : (2016) 6 WBLR 638

Hon'ble Judges: Siddhartha Chattopadhyay, J.

Bench: Single Bench

Advocate: Mr. Abhrajit Mitra, Ld., Senior Advocate, Mr. Aniruddha Roy, Mr. Jishnu Chowdhury, Mr. Satadeep Bhattacharya, Ms. Amrita Pandey, Mr. Shantanu Chattopadhyay and Mr. Navaneet Misra, Advocates, for the Petitioner; Mr. Aniruddha Chatterjee, Mr. Rahul Karmakar

Final Decision: Dismissed

Judgement

Siddhartha Chattopadhyay, J. - This revisional application emanates from the Order dated 22.02.2016 passed by the learned Civil Judge, (Senior Division), 9th Court at Alipore, South 24 Parganas in connection with the application under Order 6, Rule 17 of the Code of Civil Procedure.

2. According to the petitioner, the impugned order, as regards the amendment application filed by the opposite party, ought to have been rejected on the ground that the proposed amendments were intended to incorporate in the plaint only to introduce new matters and new facts which are barred by limitation. According to them, the present petitioners' ownership was challenged by the opposite party/plaintiff. The present petitioner/defendant got the property by virtue of a sale certificate of 1973 and decree for sale of the same year which cannot be challenged after nearly 50 years. He further added it would be evident on the face of the decree, Court auction sale, sale certificate, the plaintiffs have no case at all and it does not deserve any favourable order in connection

with the said suit.

3. Learned Counsel appearing on behalf of the opposite party/plaintiff contended that allegation splashed against them is unfortunate on the ground that they wanted to incorporate those matters in the plaint itself, which they have derived their knowledge from the application under Order 39, Rule 4 by the present petitioner. He further contended that the story which they have mentioned in their application under Order 39, Rule 4 was not known to them and therefore to combat with the rival statement made in written statement, they want to incorporate the same. According to them it is not a new one, on the contrary, since the present petitioner/defendant has taken that plea so they are under a legal obligation to incorporate the same in their plaint. On perusal of the amendment application filed by the plaintiff under Order 6, Rule 17, I find from Para 6, Page 8, of the petition under Order 6, Rule 17 that the present petitioner among other things alleged:-

(I) They were the owners of the entire suit premises No. 152, Biren Roy Road, Kolkata 700061 and they were claiming it on the basis of a Court sale held on March 21, 1973 conducted by the learned Subordinate Judge, 7th Court at Alipore, in Money Execution No. 17 of 1967 arising out of the decree in Suit No. 2161 of 1963 and Suit No. 2024 of 1964.

(II) The said Court sale was pursuant to an order passed in connection with execution of a decree and the suits which were filed by Chunilal, who is also known as P.B. Shah for recovery of money from the said Tarini Gupta Chaudhuri a private company limited by shares, T.G. Chaudhuri (P) Ltd.

(III) It has also been alleged by the petitioner/defendant in their application under Order 39, Rule 4 that some money was allegedly borrowed by the said Tarini Gupta Chaudhuri Private Limited from U.B.I. and that remained unpaid. Allegedly, that was secured by hypothecation. U.B.I. sued M/s. T.G. Chaudhuri (P) Ltd., and Others, and strangely one Chunilal Shah @ P.B. Shah for recovery of sums due and payable by the Private Limited Company.

(IV) Besides that, they have also claimed that their predecessor-in-interest P.B. Shah became the owner of the suit property on payment in respect of proceedings and decrees to which the predecessor-in-interest of the petitioners were parties.

4. Those facts and their contentions as ventilated in written objection in connection with Order 39, Rule 4 of the Code of Civil Procedure, they wanted to incorporate the same in the plaint.

5. At the time of argument, learned Counsel appearing on behalf of the petitioner has contended that the suit is barred by limitation because decree and Court sale was obtained in 1973. So they have prayed for rejection of the amendment application and also contended that these amendments are unnecessary for adjudication of the suit.

6. As against this, learned Counsel appearing on behalf of the opposite party/plaintiff contended that those amendments are required in the interest of the effective adjudication on the ground whether he had any knowledge about alleged Court auction sale, sale certificate and money execution. According to him, he was not made a party to the said proceedings and that the so called decree obtained by such Court sale is not binding upon him.

7. Be that as it may, whether he has any right, title and interest in the suit property, that can be adjudicated only after taking evidence and not at this early stage. But since the petitioner himself in his written objection, as defendant mentioned certain facts and on the basis of which he is claiming his title to the property, obviously the present plaintiff/opposite party has the right to challenge the same and unless and until it is incorporated in the plaint he will debar from leading any evidence to that effect.

8. Learned Court below has discussed the factual aspects but has passed a cryptic order which has been vehemently criticised by the learned Counsel appearing on behalf of the petitioner. It is true that the learned Court below did not give his reasons in coming to that decision. Only he has observed that it is necessary for adjudication of real controversy in the suit.

9. Learned Counsel appearing on behalf of the petitioner has cited decisions reported in **(2009) 10 SCC 84 (Revajeetu Builders and Developers v. Narayanswamy and Sons and Ors.)**, a decision reported in **2007 (4) CHN 712 (Uniworth Resorts Limited & Ajay Prakash Lohia v. Ashok Mittal and Ors.)**, opposite party relied on the decision reported in **CDJ 2007 Cal HC 639 (Sk. Abul Kalam v. Umapada Maity)**, a decision reported in **CDJ 2001 SC 045 (Ragu Thilak D. John v. S. Rayappan)**, a decision reported in **CDJ 2002 SC 078 (Prem Bakshi & Others v. Dharam Dev & Others.)**, a decision reported in **(2010) 13 SCC 427 (Oryx Fisheries Private Limited v. Union of India & Ors.)**, and a decision reported in **2001 (2) CHN (Life Insurance Corporation of India v. Mirta Lina Pvt. Ltd.)**

10. On perusal of the said decisions it appears to me that while allowing or rejecting the application for amendment Court should see the basic principles which would be the guiding factors:-

"(I) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(II) Whether the application for amendment is bona fide or mala fide;

(III) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(IV) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(V) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and,

(VI) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6, Rule 17 . These are only illustrative and not exhaustive.

The decision on an application made under Order 6, Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendment the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."

11. In fact, allowing the application for amendment does not mean that the suit is decided. On the contrary, the amendment is just a kind of advance notice upon the other side as to how he would substantiate his case and so that the opposite party could meet his stand also. On perusal of the plaint and the written objection filed by the present petitioner in connection with his application under Order 39, Rule 4 , it appears to me that the present petitioner/defendants' main stand is such that they are owners of the property on the basis of the Court sale and on the basis of the result of the money execution case. To combat with the said assertion of the defendant/petitioner, the plaintiff/opposite party has filed an application under Order 6, Rule 17 . It appears to me that since the real controversy between the parties is who is the owner and in possession of the suit properties and since both of them are putting their rival claims on the basis of the documents, which they have. In such circumstances, I am of the view to resolve the said dispute this amendment cannot be said as unnecessary.

12. Perhaps it is needless to mention that at the time of allowing an application under Order 6, Rule 17 Court should not go into the merit of the application. Regarding limitation point, I would say that it is too early to come to the conclusion that the plaintiff/opposite party had the knowledge of Court sale and money execution decree because it is there specific averment that those orders were passed behind their back.

13. In my considered view, there is nothing wrong in the impugned order itself, although it is a cryptic order. I want to put it on record that on the same day learned Court below passed two orders i.e. one is under Order 39, Rule 4 application and other is in connection with Order 6, Rule 17 . The petitioner herein specifically challenged the said order passed in connection with under Order 6, Rule 17 .

14. Therefore, after hearing both sides and on perusal of the factual aspects as well as the decisions on which the parties relied on, I am of the view that the impugned order does not warrant any interference. Accordingly, the impugned order passed by the learned Court below is hereby affirmed. The civil revisional application stands dismissed

but without any cost.

15. Let a copy of this judgment be sent to the learned Court below for their information and taking necessary action in accordance with law.

16. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.