

Civil Revision
Present : The Hon'ble Mr. Justice Prasenjit Mandal

Judgement On: October 6, 2010.

C.O. No. 1237 of 2008
&
C.O. No.1242 of 2008

Adhir Paul & Ors.

Versus

Becharam Pachal & Ors.

Point:

AMENDMENT OF PLAINT: Suit for declaration, confirmation of possession the basis of purchase- By the proposed amendment, they intended to incorporate certain facts of acquisition of title by adverse possession- Amendment whether permissible-Code of Civil Procedure,1908,O 6 R 17

Facts:

The plaintiffs /opposite parties instituted a title suit being the T. S. No.143 of 2005 before the learned Civil Judge (Junior Division), First Court, Howrah for declaration, confirmation of possession and also for declaration that a sale deed dated July 2, 2004, as described in schedule 'C' to the plaint, is illegal and void and for other reliefs. The defendant nos.5 to 8 contested the suit by filing a joint written statement denying all the material allegations. The plaintiffs claimed the suit property on the basis of purchase. Subsequently, by the proposed amendment, they intended to incorporate certain facts of acquisition of title by adverse possession in respect of 'A' schedule property by the sons and daughters of Nikunja Behari Paul by his second wife Nalinibala. That

application for amendment of the plaint was allowed. Being aggrieved, the defendants have come up with this instant application.

Held:

By the proposed amendment, the plaintiffs have wanted to incorporate an alternative averment in support of their stand with regard to the suit property. First of all, they have claimed the suit property by way of title by purchase. By the proposed amendment they have wanted to incorporate the averment of acquisition of title by adverse possession by the sons and daughters of Nikunja by his second wife Nalinibala, i.e., by the vendors of the plaintiffs. Such an amendment was sought for after the written statement had been filed. Such alternate and inconsistent stand if allowed to exist, it will not destroy the earlier stand taken by the plaintiffs on the basis of the title deed. The proposed amendment does not destroy at all any admission made by the plaintiffs earlier. The proposed amendment, if allowed, will not cause the change of the nature and character of the suit. The plaintiffs have not prayed for amendment of the prayer portion of the plaint at all. The power to allow amendment is wide. A party should be allowed to amend his pleading to put forward his entire case for decision of real controversy between the parties and for that reason additional or alternative ground not destructive to earlier ground is permissible. The amendment did not cause injustice or prejudice to the other side.

Para-13

Cases Cited:

Kanailal Maity Vs. M/s. Kolkata Construction & ors. (2009) 1 CLT 540,

Santosh Kumar Hui Vs. Prakash Kumar Palit and ors. 1995 (2) CLJ 191

(1994) 2 SCC 29,

(2007) 3 WBLR 67

AIR 2006 NOC 388 (Andhra Pradesh)

For the petitioners: Mr. Sanat Chowdhuri.

**For the opposite parties: Mr. Jiban Ratan Chatterjee,
Mr. Nilanjan Bhattacharjee,
Mr. Dipanyan Sinha Roy.**

The Court:

These two applications are directed against the orders dated January 17, 2008 passed by the learned Civil Judge (Junior Division), Howrah in both the Title Suit No.143 of 2005 and the Title Suit No.217 of 2005 thereby allowing the amendment of plaint and the written statement respectively under Order 6 Rule 17 of the Code of Civil Procedure on contest with costs of Rs.150/-.

2. Since the same question of law is involved in the two matters, the two applications are disposed of by this common judgment.

C.O. No. 1237 of 2008

To appreciate the matter, I am discussing the fact of this case.

3. The plaintiffs /opposite parties instituted a title suit being the T. S. No.143 of 2005 before the learned Civil Judge (Junior Division), First Court, Howrah for declaration, confirmation of possession and also for declaration that a sale deed dated July 2, 2004, as described in schedule 'C' to the plaint, is illegal and void and for other reliefs. In that suit, the defendant nos.5 to 8 contested

the suit by filing a joint written statement denying all the material allegations. The plaintiffs claimed the suit property on the basis of purchase. Subsequently, by the proposed amendment, they intended to incorporate certain facts of acquisition of title by adverse possession in respect of 'A' schedule property by the sons and daughters of Nikunja Behari Paul by his second wife Nalinibala. That application for amendment of the plaint was allowed. Being aggrieved, the defendants have come up with this application.

4. Now the point that emerges is whether the learned Trial Judge was justified in allowing the application for amendment of the plaint.

5. Upon hearing the learned Advocate for both the parties and on perusal of the materials on record, I find that admittedly, one Nikunja Behari Paul was the original owner of the suit properties, as described in schedule 'A' to the plaint. He died in the year 1988. Previously, Nikunja Behari Paul was married to Satyabala Pal and one daughter namely, Bhaduri, was born in the wedlock. But Satyabala died in the year 1938. Thereafter in 1939 Nikunja Behari Paul was married for the second time to Nalinibala and three sons, namely, Basudev, Biswanath and kashinath and two daughters, namely, Padmarani and Jaba were born in the wedlock. Bhaduri died sometime in the month of November / December, 1955, i.e., before the Hindu Succession Act came into force as per plaint case. The second wife of Nikunja Behari Paul died in 1978 and Nikunja Behari Paul died in 1988.

6. According to plaint case, since Bhaduri died prior to the year of 1956; her two sons and two daughters did not inherit any property left by Nikunja Behari Paul and the heirs of Bhaduri have

been made as the defendant nos.1 to 4 in the suit. Nikunja Behari Paul died leaving three sons and two daughters having 1/5th share each in respect of the property mentioned in schedule 'A' to the plaint, contends the plaintiffs. Thereafter on May 28, 2004, the present plaintiffs purchased to 'A' schedule property from the three sons of Nikunja Behari Paul, namely, Basudev, Biswanath and Kashinath by a registered deed. The other heirs told them that they would not create any disturbance to the possession of the vendees. The vendors had been possessing the suit property all along. But, subsequently the defendant nos.1 to 4 tried to resist the possession of the plaintiff and for that reason the plaintiffs have filed the said suit for the relief already stated.

7. Subsequently, the plaintiffs filed an application for amendment of the plaint incorporating the fact of acquisition of title by adverse possession by the sons and daughters of Nikunja. That application was allowed by the impugned order.

8. Another Title Suit bearing number T. S. No.217 of 2005 was filed by the heirs of Bhaduri and both the suits were being tried analogously as per order of Justice P. S. Banerjee (as His Lordship then was) in the C. O. No.3383 of 2006.

9. Mr. Chowdhuri, learned Advocate appearing on behalf of the petitioners, has submitted that in view of the decision of Kanailal Maity Vs. M/s. Kolkata Construction & ors. reported in (2009) 1 CLT 540, where the original suit relates to a suit for permanent injunction, any amendment attempt to alter the suit as a suit for declaration thereby claiming decree over a property in question amounts to change in the nature and character of the suit and so it is not permissible.

10. He has also referred to the decision of Santosh Kumar Hui Vs. Prakash Kumar Palit and ors. reported in 1995 (2) CLJ 191 stating that any amendment contradictory to the original suit is not maintainable and so, the application for amendment should be rejected.

11. Similarly, he has referred to the decision reported in (1994) 2 SCC 29, (2007) 3 WBLR 67 and AIR 2006 NOC 388 (Andhra Pradesh) and thus he has submitted that the amendment seeking incorporation of adverse possession, while the suit was for declaration of title and possession, is not permissible. Inconsistent amendment cannot be allowed to exist and if such amendment is allowed, it will cause the change of the nature and character of the suit. Therefore, the application for amendment of the plaint should have been rejected by the learned Trial Judge. So, the impugned order is not sustainable. It should be set aside.

12. On the other hand, Mr. Jiban Ratan Chatterjee, learned senior Advocate appearing on behalf of the opposite parties, has submitted that the amendment should be allowed to solve the dispute between the parties once for all and such an amendment can be allowed at any stage of the suit. Alternate stand can well be considered. Therefore, there is no illegality in the impugned order.

13. No doubt, by the proposed amendment, the plaintiffs have wanted to incorporate an alternative averment in support of their stand with regard to the suit property. First of all, they have claimed the suit property by way of title by purchase. By the proposed amendment they have wanted to incorporate the averment of acquisition of title by adverse possession by the sons and daughters of Nikunja by his second wife Nalinibala, i.e., by the vendors of the plaintiffs. Such an amendment was sought for after the written statement had been filed. Such alternate and inconsistent stand if

allowed to exist, it will not destroy the earlier stand taken by the plaintiffs on the basis of the title deed. The proposed amendment does not destroy at all any admission made by the plaintiffs earlier. Therefore, in order to solve the dispute once for all, I am of the view that the proposed amendment, if allowed, will not cause the change of the nature and character of the suit. The plaintiffs have not prayed for amendment of the prayer portion of the plaint at all. The power to allow amendment is wide. A party should be allowed to amend his pleading to put forward his entire case for decision of real controversy between the parties and for that reason additional or alternative ground not destructive to earlier ground is permissible. The amendment did not cause injustice or prejudice to the other side. Under the circumstances, I do not find that the learned Trial Judge has failed to exercise his jurisdiction in allowing the application for amendment of the plaint. He has not exceeded his jurisdiction also in exercising his right. Therefore, there is nothing to interfere with the impugned order.

14. Accordingly, this revisional application fails to succeed. It is hereby dismissed.

Considering the circumstances, there will be no order as to costs.

C.O. No.1242 of 2008

15. The plaintiffs of the Title Suit No.143 of 2005 are the defendant nos.1 to 8 of the Title Suit No.217 of 2005. The defendant nos. 5 to 8 of the Title Suit No.143 of 2005 are the plaintiffs of the Title Suit No.217 of 2005. The plaintiffs of the Title Suit No.217 of 2005 have filed the suit for declaration that the defendants do not create any disturbances in peaceful enjoyment of the purchased 'A' schedule properties of the plaint, declaration that the defendants do not use the Dag

No.1400 of the plaintiff as pathway, i.e., the Dag No.1401 and permanent injunction. So, the defendant nos. 1 to 8 of the Title Suit No.217 of 2005 have wanted to amend the written statement filed by them in the said suit in the same manner as in the Title Suit No.143 of 2005. By the same order that application for amendment of the written statement was allowed. Being aggrieved, the plaintiffs of the Title Suit No.217 of 2005 have preferred the revisional application. For the reasons discussed earlier in the C.O. No.1237 of 2008, I am of the view that there is nothing to interfere with the impugned order. The order was justified under the circumstances to solve the dispute once for all between the parties. Accordingly, I am of the view that this application for setting aside the impugned order should also be dismissed.

16. So the application is dismissed.

17. Considering the circumstances, there will be no order as to costs.

18. At the time of disposal of the earlier C.O. No.3383 of 2006, the Hon'ble Justice P. S. Banerjee (as His Lordship then was) directed the learned Trial Judge to dispose of the two suits within one year after permitting the parties to the suit to place their respective cases. Such order was passed on April 17, 2007. So, there is already delay in the matter of disposal of the two suits. Under the circumstances, the learned Trial Judge is directed to dispose of the two suits within a period of six months from the date of communication of the order.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)