

**IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)**

C.O. No. 3198 of 2015

Basanti Devi Shaw & Ors.

-Vs.-

Chandra Prakash Gupta & Ors.

Present :

The Hon'ble Mr. Justice Siddhartha Chattopadhyay

For the Petitioners	:	Mr. Raja Basu Chowdhury, Mr. Rajarshi Dutta, Mr. Sayantan Bose.
For the Opposite Parties	:	Mr. Haradhan Banerjee, Mr. P.P. Mukherjee.
Heard On	:	14.12.2015, 22.12.2015, 06.01.2016.
C.A.V. On	:	06.01.2016.
Judgment Delivered on	:	15.02.2016.

Siddhartha Chattopadhyay, J.:

Doubting the correctness of the impugned order dated 15.05.2015 passed by the learned Civil Judge, (Senior Division), 1st Court, Howrah in Title Suit No. 215 of 2015 the defendant/petitioner has come before this Court on the ground that the learned Court below failed to appreciate that by allowing the application for amendment, the opposite party/plaintiff Nos.

1 and 2 wanted to get the injunction order extended on the newly added suit property. According to him, no copy of such applications were served upon him. He contended that initially the plaint was filed claiming relief in respect of Plot No. 233 Belilious Road, Howrah-1. Ad interim injunction order was also passed relating to that suit property and thereafter amendment has been sought for in respect of Plot No. 233/10 instead of Plot No. 233 so far as plaint and injunction application is concerned. But the opposite party/plaintiff with an ulterior motive did not mention in the plaint of Title Suit No. 215 of 2015 that he had filed another suit bearing Title Suit No. 194 of 2010 showing the suit property as 233/6, Belilious Road, P.S.-Bantra. In such circumstances he has prayed for setting aside the impugned order.

2. To come to a finding factual aspects of this instant suit needs to be restated. Sieving doubt unnecessary details, the opposite party/plaintiff's case in a capsulated form is such that 'A' Schedule Property is a thika land and defendant No. 6 was there as a thika tenant in respect of 'B' Schedule Property. The defendant No. 6 inducted the present plaintiff as premises tenant relating to the tenanted portion at a monthly rental of Rs. 3,000 per month payable according to the English Calendar month. The plaintiff and the proforma defendant have been running their business at the 'A' Schedule Property i.e. 233 Belilious Road, Howrah-1 under the name and style of M/s. Shows Steel (Sales) India and also at the 'B' Schedule Property i.e. 233/6 Belilious Road, Howrah-1 under name and style of Om Steel India. They have their Trade Licence, Tenancy Agreement, professional tax, I/T file which would show that they have been running their business in 'A' Schedule Property Plot No. 233 Belilious Road and 'B' Schedule Property Plot No. 233/6 of Belilious Road. The defendant in collusion with others

attempted to grab the plaintiff's tenanted portion and for which they filed the suit for a declaration claiming that they have acquired valid tenancy right over 'A' and 'B' Schedule Property and has also prayed for permanent injunction restraining the defendant from making any attempt to take possession of the 'A' and 'B' Schedule Property.

3. After filing of that suit (bearing Title Suit No. 215 of 2015) the opposite party/plaintiff got an ad interim order of injunction in respect of 'A' and 'B' Schedule Property i.e. 233 Belilious Road and 233/6 Belilious Road, Howrah-1. After that, they have filed an amendment application and this time they wanted to amend the schedule contending inter alia that the holding No. 233 Belilious Road under P.S.-Bantra has been renumbered as holding No. 233/10 of Belilious Road. The learned Court below allowed that amendment and as a result amendment of injunction application was also made. Initially the injunction order was granted in respect of 233 Belilious Road, Howrah and now by virtue of amendment this has become 233/10 Belilious Road, P.S.-Bantra. After such petitions were allowed the plaintiff, filed an application under Section 151 of CPC and prayed for police help and that was also allowed by the learned Court below. Everything has been done within a month from the date of filing of this title suit. While disposing of the ad interim injunction application opposite party/plaintiff was directed to comply with Order 39 Rule 3(a) of the CPC and fixed the date 06.06.2015 for service return and acknowledgement due. There is compliance of Order 39 Rule 3(a) CPC. Be it mentioned, that amendment application has been filed after 24.04.2015 and naturally the defendant/petitioner did not have any opportunity to see the amended plaint as well as the amended injunction application.

4. At the time of hearing, learned Counsel appearing on behalf of the defendant/petitioner contended that initially a suit bearing Title Suit No. 194 of 2010 was filed showing the suit property as 233/6 Belilious Road, P.S.-Bantra. That suit was dismissed on contest but this cunning plaintiff/opposite party suppressed the said fact before the learned Court below and obtained an order in their favour by misleading the Court.

5. At the time of hearing, learned Counsel appearing on behalf of the plaintiff/opposite party submitted that this Court has no jurisdiction to go into the merit of the amendment application. In support of his such contention he has relied upon the decisions reported in 1991 (1) SCC page 613 relevant page is at para 124 page 705, (Charan Lal Sahu & -Vs.- Union of India), AIR 2006 Supreme Court 1647, (Rajesh Kumar Agarwal & Anr. – Vs.- K. K. Modi & Ors.) and also relied upon decision reported in 2015 SAR (Civil) 358. By referring the decision reported in 2006 Supreme Court 1647 he wanted to say that object of the rule is that Courts should judge the merits of the case that come before them and consequently allow all amendments that may be necessary for determining the real question in controversy between the parties, if it does not cause injustice or prejudice to the other side. He has also contended that while considering the same whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment and Court should not record a finding on the merits of the amendment sought to be incorporated. On proper scrutiny of the said finding, it appears to me that the Hon'ble Apex Court never said that it will be allowed mechanically and without application of mind. Rather Hon'ble Apex Court has restricted it that if the amendment is necessary for

determining the real question in controversy between the parties it may be allowed provided it does not cause injustice or prejudice to the other side. On perusal of the decision reported in 2015 SAR (Civil) 358, I find that the Hon'ble Apex Court held that the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. Therefore, in the instant case also, there is no blanket order of the Hon'ble Apex Court.

6. Learned Counsel appearing on behalf of the petitioner contended that after amendment of order VI Rule 17 of Civil Procedure Code, the Court may at any stage of the proceeding allow either party to alter or the amend the pleadings if it is required for determination of the real questions in controversy between the parties. Learned Counsel appearing on behalf of the petitioner further contended that amendment may be allowed by the Court if it is required for determining the real question in controversy but a duty is cast upon the Court to see by virtue of that amendment adversary should not be put into serious injustice. By racking my brain I find a decision reported in (2009) 10 Supreme Court Cases 84, and laid down certain guidelines in paragraph '63' & '64', which are reproduced below:-

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) Whether the application for amendment is bonafide or mala fide;

- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) 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 VI Rule 17. These are only illustrative and not exhaustive.

The decision on an application made under Order VI 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 bonafide, legitimate, honest and necessary amendments and should never permit male fide, worthless and/or dishonest amendments.”

7. The aforesaid view was also taken in an earlier decision in the case of Surender Kumar Sharma –Vs.- Makhan Singh reported in 2009 (10) SCC 626, in a decision reported in 2004 (8) SCC 76 in the case of Kedar Nath Agarwal –Vs.- Dhanraji Devi, Hon’ble Apex Court held –

“16. In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is

this; the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A Court of law may take into account subsequent events inter alia in the following circumstances:

- (i) The relief claimed originally has by reasons of subsequent change of circumstances become inappropriate; or
- (ii) It is necessary to take notice of subsequent events in order to shorten litigation; or
- (iii) It is necessary to do so in order to do complete justice between the parties.”

8. Certainly a Court of law is entitled to consider subsequent events if the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or it is necessary to take notice of subsequent events in order to shorten litigation or it is necessary to do so in order to do complete justice between the parties.

9. In the instant case, there was a previous suit (T.S. 194 of 2010) filed by the present opposite party as (plaintiff No. 2) against the present petitioner as (defendant No. 2) and prayed for a decree of partition in preliminary form. That suit was dismissed on contest. Be it mentioned that holding number of that previous suit (T.S. 194 of 2010) was 233/6, Belilious Road, P.S.-Bantra.

In the Title Suit No. 215 of 2015 the plaintiff/opposite party prayed for decree for declaration that the plaintiffs and proforma defendant have acquired valid tenancy right over the 'A' and 'B' Schedule Property. In the Schedule 'A' of the plaint it appears that the Plot No. is 233 Belilious Road, Howrah and Plot No. 'B' is 233/6 Belilious Road, Howrah-1. But in former suit the holding No. 233/6 Belilious Road, P.S. – Bantra and it was for a decree of a partition in respect of that Plot No. 233/6. By virtue of the amendment the petitioner changed the property from holding No. 233/6 to 233/10. Therefore, it is crystal clear that when Title Suit No. 194 of 2010 was decided against the present opposite party he had filed another case bearing No. 215 of 2015 claiming a declaration of his tenancy when his former suit has been dismissed and no appeal has been preferred. Therefore, the decree of T.S. 194 of 2010 reaches its finality. In the former suit the said plot was under Bantra P.S. but in present suit the petitioner claims that it is within Howrah P.S. Therefore there is a clear suppression of material fact.

10. Therefore, once again I am to place the cases of contesting parties along with rival submissions before the judicial operation theatre to ascertain if the order of the Court below is sustainable or not. The guideline in the decision reported in 2012 (2) Supreme Court Cases 300 relevant para at 64, I find that an application under Order VI Rule 17 cannot be taken in a casual manner. While deciding application for amendment the Court must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide worthless and/or dishonest amendments. In the instant case, the amendments sought for is not imperative because another suit was filed bearing No. 194 of 2010 on different prayer i.e. for partition, whereas the present suit (T.S. 215 of 2015) has been filed for thika

tenancy right over original Plot No. is 233 Belilious Road, Howrah. It is not a bonafide application for the reasons that he has tried to change the part of the holding according to his own sweet will without serving copy upon the other side. Just after getting ad interim injunction in respect of a particular holding, he wanted to change the same in his own way. He has complied with the direction in terms of Order 39 Rule 3(a) of CPC wherein the plot number which he has mentioned is the plot number of an ad interim application. Thereafter, he has filed an application amendment of the plot number in the plaint as well as in injunction application in respect of another holding over which the original ad interim order of injunction order was not passed. Without disclosing the fact of T.S. 194 of 2010 in the instant plaint (T.S. 215 of 2015) he wanted to suppress something which is anything but fair. It goes to show that application was not bonafide legitimate and honest. In view of the clear direction of the Hon'ble Apex Court learned Court below can never permit malafide, worthless and/or dishonest amendments.

11. Onerous duty of the Court is to render justice on its merits and ensure that the rule of justice is implemented in it's letter and spirit. To give a meaningful shape to the above maxim the litigant should place the actual facts before the Court without concealing any material fact so that the Court can come to a correct conclusion. Here this opposite party has suppressed the material fact i.e. his former suit in respect of holding No. 233, has been dismissed on merit and no appeal has been preferred against the said order. Therefore, he has made a desperate attempt to file the present suit (T.S. 215 of 2015) and sought for an amendment of the holding number of 233 and in this way he has been able to a create a smog and procured an order by

suppressing all the material facts and thus he has played a trickery with the Court below.

12. Where truth is covered under a thin layer of mystery and falsehood, duty of the Court is to unveil the mystery and to explore the truth. By hook or by crook even by throwing dusts in the eyes of the Court some litigants want to snatch an order from the Court by misusing the procedural laws to gain something by practising fraud. This negative innovative ideas are the main cause for spiralling of cases and cultivation of litigation at every stage, which should be axed.

13. Now the time is up to 'Cross the Rubicon'. Since everything has been done by the present opposite party most surreptitiously and in a clandestine manner, I am of the view that the entire order dated 15th May, 2015 passed by the learned Court below does not sustain and accordingly it is set aside.

14. Learned Court below is directed to proceed with the case in accordance with law.

15. There shall be no order as to costs.

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

(SIDDHARTHA CHATTOPADHYAY, J.)

A.F.R/N.A.F.R