

Civil Revision
PRESENT: The Hon'ble Justice Jyotirmay Bhattacharya
Judgment On : 19-02-2010.

C. O. 1119 of 2006
Ajit Kumar Sarkar
-Vs-
Smt. Renu Karmakar & Ors.

Point:

AMENDMENT: Amendment filed before the Appeal Court-Whether be rejected merely because the same was filed at the belated stage- Code of Civil Procedure, 1908, O6 R17

Fact: The petitioner filed the instant application challenging the order passed by the Ld. Additional District Judge, Basirhat in a Title Appeal, arising out of a Suit for Declaration, by which the plaintiff/respondent/petitioner was not permitted to amend his plaint at the appellate Stage.

Held: An amendment cannot be rejected merely because of the fact that the same was filed at the belated stage before the Appeal Court as such amendment is necessary for complete adjudication of the dispute involved in the suit and the sufferance of the defendant for such delay can be compensated by costs.

Paragraph – 19

Cases: Ram Chandra Sukhram Mahajan –Vs- Damodar Trimbak Tanksale reported in AIR 2007 SC 2577.

Andhra Bank –Vs- ABN Amro Bank N.V. reported in AIR 2007 SC 2511.

Surendra Kumar Sharma –Vs- Makhan Singh reported in (2010)1 CLJ SC 89.

For the Petitioner : Mr. Bidyut Kumar Banerjee,
Ms. Shila Sarkar,

Mr. Arnab Roy.

For the Opposite : Mr. S.P. Roy Chowdhury,
Party No1. Mr. Sabyasachi Bhattacharya,
Mr. S.T. Mina.

For the Opposite : Mr. Chandradoy Roy.
Party Nos.2 to 6.

The Court:

1. This application under Article 227 of the Constitution of India is directed against an order being No.24 dated 25th January, 2006 passed by the learned Additional District Judge, Basirhat in Title Appeal No.12 of 2005 by which the plaintiff/respondent/petitioner was not permitted to amend his plaint at the appellate Stage. The plaintiff/ respondent/ petitioner was aggrieved by the said order. Hence, he filed the instant revisional application before this Court.

2. Heard Mr. Banerjee, learned Senior Counsel appearing for the petitioner and Mr. Roy Chowdhury, learned Senior Counsel appearing for the opposite party. Considered the materials on record including the order impugned.

3. Let me now consider as to how far the learned Appeal Court was justified in passing the impugned order in the facts of the instant case. The plaintiff filed a suit for declaration of his title in respect of "A" schedule property. He has also prayed for a decree for recovery of possession for evicting the defendants from "kha" schedule property on revocation of licence. He also prayed for a decree for permanent injunction for restraining the defendants from changing the nature and character of 'kha' schedule property and also for restraining them from dispossessing the plaintiff

from any part of “ka” schedule property beyond “kha” schedule. He also prayed for a decree of mesne profit against the defendant.

4. On perusal of the plaint, this Court finds that the plaintiff’s claim therein that ‘kha’ schedule property is a part of “ka” schedule property. It was further stated therein that originally Kunja Behari Majumdar took settlement of the ‘ka’ schedule land from the Refugee Rehabilitation Department, Government of West Bengal. After obtaining settlement of the said land, he constructed one pucca room of temporary nature and started living there. Subsequently, the plaintiff purchased the right, title and interest of the said Kunja Behari Majumdar in the said “ka” schedule property by registered deed of cobala dated 18th November, 1967 and thereafter constructed one room with tile shed of temporary nature and started living there by mutating his name in the concerned Municipality and by paying rates and taxes of the said holding to the Municipality. The plaintiff permitted the defendant nos.1 and 2 to reside in the “kha” schedule property temporarily for three months. Such permission was granted during rainy season of 1972 as the defendant no.1 was working as a maidservant in the plaintiff’s house and the defendant no.2 was her husband. Initially they agreed to vacate the suit property but subsequently they did not vacate the “kha” schedule property and prayed for one month’s time for delivering possession thereof to the plaintiff. Hence, the instant suit was filed.

5. The defendant nos.1 and 2/opposite parties contested the plaintiff’s said suit by filing written statement denying the plaintiff’s title in the suit property. The defendants claimed that they are the owners of the said property by virtue of the deed of gift executed by the R.R. Department of the Government of West Bengal in favour of the said defendants on 26th July, 1972. The

defendants, thus, denied the grant of licence in their favour and/or revocation thereof as claimed by the plaintiff. The defendant, thus, prayed for dismissal of the said suit.

6. The parties have led their respective evidence in support of their claim in the said suit. The said suit was ultimately decreed by the learned Trial Judge on contest. The defendant nos.1 and 2 were directed to vacate the “kha” schedule property within sixty days from the date of the decree and to deliver vacant possession to the plaintiffs by removing unauthorized structures from the suit property within sixty days from the decree. In default the plaintiff was given liberty to recover possession of the “kha” schedule property by execution of the said decree. The right, title and interest of the plaintiff in the suit property was declared. The defendant nos.1, 2 and 4 were restrained permanently from interfering with the right, title, interest and enjoyment of the suit property by the plaintiff.

7. Being aggrieved by and dissatisfied with the said judgment and decree of the learned Trial Judge, the defendant nos.1 and 2 preferred an appeal being T.A. no.12 of 2005 before the learned Additional District Judge at Basirhat. In the said appeal, an application for amendment of plaint was filed by the plaintiff for introducing that in the event it is found that the plaintiff's right, title and interest in the suit property has not matured on the basis of his purchase from Kunja Behari Majumdar, still then, his title in the suit property cannot be disputed as his title was subsequently perfected by grant of subsequent allotment of the said land by the R.R. Department of the Government of West Bengal in favour of the plaintiff. The plaintiff further proposed to introduce that the defendant has not acquired any title in the suit property by virtue of the alleged deed of transfer executed by the Government in favour of the defendants on 26th July, 2001 inasmuch as,

such transfer was illegal, collusive and void. The plaintiff also proposed to add an additional relief by way of declaration to the effect that the registered deed dated 26th July, 2001 executed by the Government in favour of the defendants is void and illegal and as such, the same is not binding upon the plaintiff.

8. Plaintiff's prayer for such amendment of plaint was rejected by the learned Appeal Court on various grounds namely:-

- i) Such inconsistent and contradictory claims of the plaintiff regarding his title cannot be allowed to be introduced by way of amendment.
- ii) Such a belated application of amendment cannot be allowed.
- iii) Since the allotment in favour of the defendants, was made during the pendency of the suit, the validity of such transfer can be challenged by taking recourse to Section 52 of Transfer of Property Act.

9. The learned Appeal Court, thus, rejected the plaintiff's prayer for amendment on the above grounds.

10. Appearing for the petitioner Mr. Banerjee, learned Senior Counsel contended that his client never proposed to introduce any inconsistent and contradictory claim with regard to his claim for title in the suit property by way of amendment. Mr. Banerjee contended that his client, claimed his title in the suit property from the very beginning and he maintained his said stand till date. Mr. Banerjee contended that by the proposed amendment his client simply wanted to give an additional approach to his existing claim for title in the suit property. As such, according to Mr. Banerjee the

learned Appeal Court committed an illegality by holding that an inconsistent an/or contradictory plea for title was sought to be introduced by the plaintiff in the plaint by way of amendment at the appellate stage.

11. Mr. Banerjee submitted that if any amendment is found to be necessary for complete adjudication of the suit, prayer for amendment cannot be disallowed merely because of the fact that the proposed amendment is inconsistent with the original pleadings.

12. Mr. Banerjee further submitted that when amendment of plaint was sought for by the plaintiff to make his claim more precise to enable the Court to adjudicate upon it more satisfactorily, neither the Trial Court nor the Appeal Court should have dismissed the said application for amendment merely because of the fact that such application for amendment was filed at a belated stage particularly when the loss which the other party may suffer on account of such delay, can be compensated by cost.

13. In support of such submission Mr. Banerjee relied upon the following decisions of the Hon'ble Supreme Court :-

- i) Ram Chandra Sukhram Mahajan –Vs- Damodar Trimbak Tanksale reported in AIR 2007 SC 2577.
- ii) Andhra Bank –Vs- ABN Amro Bank N.V. reported in AIR 2007 SC 2511.
- iii) Surendra Kumar Sharma –Vs- Makhan Singh reported in (2010)1 CLJ SC 89.

Thus, he prayed for setting aside the impugned order and for allowing his client to amend the plaint accordingly.

14. Mr. Roy Chowdhury, learned Senior Counsel appearing for the Opposite party submitted that though it is true that the Court is very liberal in allowing the amendment of the pleading but, still then, there are some yardstick which the Court is required to maintain while considering a prayer for amendment made by the party. Mr. Roy Chowdhury contended that though prayer for amendment can be liberally allowed at the trial stage by the learned Trial Court before commencement of the trial of the suit but such liberal approach cannot be taken by the Appeal Court when amendment is sought for at the appellate stage particularly when the Appeal Court finds that a de novo trial will be necessary, if such amendment is allowed. Mr. Roy Chowdhury further contended that the Appeal Court should not allow any unnecessary amendment particularly when the proposed amendment is inconsistent with and/or contradictory to original pleadings.

15. Mr. Roy Chowdhury pointed out that the plaintiff initially prayed for declaration of his title in the suit property on the basis of his purchase from Kunja Behari Majumdar in 1967. But in the proposed amendment he wanted to introduce that he became the owner of the suit property by way of grant of allotment of the suit land by the state in his favour. According to Mr. Roy Chowdhury, these two pleadings of the plaintiff are inconsistent with each other and thus, he supported the findings of the learned Appeal Court.

16. Mr. Roy Chowdhury further contended that if such amendment is allowed at the appeal stage, a de novo trial with regard to the adjudication of plaintiff's claim for title will be necessary. Such belated application for amendment, according to Mr. Roy Chowdhury, was rightly rejected by the learned Appeal Court. Mr. Roy Chowdhury, thus, invited this Court not to interfere in the impugned order.

17. In reply to such submission Mr. Banerjee submitted that he cannot agree with the submission of Mr. Roy Chowdhury to the effect that de novo trial will be necessary in the instant case, if such amendment is allowed. Mr. Banerjee pointed out from the judgment of the Trial Court that though such pleadings regarding grant of allotment of the suit property by the Government in favour of the plaintiff was not specifically pleaded in the plaint but the factum of such grant in favour of the plaintiff was mentioned in the deposition of the plaintiff and the learned Trial Court also considered the effect of such grant while considering the plaintiff's claim for title in the suit property. Mr. Banerjee, thus, contended that, in fact, such amendment was sought for only to keep his pleadings in conformity with the evidence so that objection is not taken before the learned Appeal Court as to admissibility of the said evidence because such evidence was beyond the pleadings. Mr. Banerjee further contended that when the parties participated in the trial of the said suit with full knowledge about the grant of allotment of the said land by the Government in favour of the plaintiff and further when such grant has also been disclosed in evidence in the suit, de novo trial will not be necessary even if such amendment is allowed.

18. Considering the aforesaid submission of the learned Counsel of the parties, this Court holds that the submissions of Mr. Banerjee is much more acceptable than the submissions of Mr. Roy Chowdhury in the facts of the instant case for the following reasons :-

- i) Firstly, on perusal of the original pleadings of the plaintiff as well as the proposed amendment, this Court does not find any inconsistency and/or contradiction between such pleadings. The plaintiff all throughout claimed his title in the suit property. In the original plaint he claimed that the Kunja Behari Majumdar was the settle of the suit property from the Government and the plaintiff became the owner thereof by way of purchase from Kunja Behari Majumdar by a registered deed of cobala dated 18.11.1967. In the proposed amendment he wanted to introduce that in the event it is found that his title was not perfected by such transfer but, still then, his title cannot be disputed as the defect, if there be any, in the plaintiff's title, such defect was cured by subsequent grant of allotment made by the Government in favour of the plaintiff. This Court does not find any contradiction and/or inconsistency between the original pleadings of the plaintiff and his proposed amendment. In fact, the plaintiff made his claim for title more precise by such amendment which, in my view, will help the Court to adjudicate the issue regarding the title of the parties more effectively.
- ii) It is rightly pointed out by Mr. Banerjee that the parties participated in the trial of the said suit with their knowledge about the grant of settlement made by the Government in favour of the plaintiff and the learned Trial Judge had also

considered the effect of such allotment in his judgment. As such, even if such amendment is allowed, de novo trial, in my view, will not be necessary.

19. Relying upon the decisions of the Hon'ble Supreme Court which were cited by Mr. Banerjee, this Court holds that such an amendment cannot be rejected merely because of the fact that the same was filed at the belated stage before the Appeal Court as in my view such amendment is necessary for complete adjudication of the dispute involved in the suit and the sufferance of the defendant for such delay can be compensated by costs.

20. Accordingly, the impugned order stands set aside. The plaintiff's prayer for amendment of plaint is allowed subject to payment of cost of Rs.2,000/- to the defendant nos.1 and 2 within two weeks from date. The plaintiff is permitted to carry out such amendment in the plaint in compliance of the provision of Order 6 Rule 18 of the Code of Civil Procedure within two weeks from date. The plaintiff is directed to serve copy of the amended plaint upon the defendant within two weeks thereafter. The defendant are also permitted to file additional written statement to the amended pleadings of the plaintiff within four weeks from the service of the copy of the amended plaint upon them.

21. The revisional application is, thus, disposed of.

22. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

(*Jyotirmay Bhattacharya, J.*)