

BEFORE

THE HON'BLE MR JUSTICE HN SARMA

The subject matter of challenge in this revision petition is the impugned order dated 9.12.10 passed in Misc. (J) Case No. 31/09 by the learned Munsiff, Bongai gaon arising out of T.S. No.16/07 by which the prayer of the plaintiff/petitioner to amend the plaint incorporating the subsequent events has been rejected.

I have heard Mr. D. Mazumdar, learned counsel for the petitioner and Mr. MH Ahmed, learned counsel appearing for the respondents.

The petitioner as plaintiff instituted the Title Suit No. 16/07 in the court of learned Munsiff, Bongaigaon praying for specific performance of contract in respect of the suit property as described in the plaint. The defendant, summoned of the suit having been received, appeared and filed written statement. Suit was filed on 12.4.07 and upon perusal of the pleadings of the parties, the learned Munsiff framed issues on the 17.7.09 but neither of the parties has submitted their affidavit in evidence in respect of their case. At this stage, 29.10.09, the plaintiff filed an application under Order 6 Rule 17 of the CPC for amending the plaint by incorporating para 25A in the plaint. According to the plaintiff the need for amendment of the plaint necessitated inasmuch as during the pendency of the suit, the defendant by executing three sale deeds all dated 26.11.08 sold the suit property in favour of the third party and this subsequent fact was required to be incorporated in the plaint. At paragraphs 4 and 5 of the application it is stated as follows :

4. That it is humbly submitted that in a recent development, the plaintiff has reliably learnt that the Defendant has transferred three registered sale deeds out of his share of 8 Lechas, during pendency of this suit vide Regd. Sale Deed No. 1411/1573 of 2008 dtd. 26.11.08 (in favour of the Purchaser Md. Sheikh Ismail) for land measuring 0.57 Lechas and Regd. Sale Deed No. 1409/1571 of 2008 dtd. 26.11.08 (in favour of purchaser Tanay Paul) for land measuring 0.72 Lechas) and the other Regd. Sale Deed bearing No. 1410/1572 of 2008 dtd. 26.11.08 (in favour of purchaser Shri Basudeb Saha for land measuring 0.84 Lechas). And the said new facts are now required to be inserted in the plaint by way of amendment.

5. That the plaintiff begs to submit that Certified copies of the aforesaid Regd. Sale Deeds bearing Deed No. 1410/1572 of 2008 dtd. 26.11.08 No. 1411/1573 of 2008 dtd. 26.11.08 and Regd. Sale Deed No. 1409/1571 of 2008 dtd. 26.11.08 executed by the Defendant in favour of different purchasers are annexed herewith for Your Honour's kind perusal and doing the needful.

Opposing the said prayer for amendment the defendant submitted their objection specifically stating that the plaintiff has not been able to show due diligence with regard to the facts sought to be incorporated in the plaint. The learned trial court upon hearing the learned counsel for the parties rejected the prayer for amendment vide impugned order dated 19.2.10 specifically on the ground that the suit has already commenced and the issues were framed, which is the subject matter of challenge in this civil revision petition.

Mr. Mazumdar submits that the aforesaid facts arose after filing of the suit and when the suit property was transferred to the third party on 26.11.08 and only after obtaining of the certified copy of the sale deed the plaintiff could ascertain the said facts and immediately thereafter the plaintiff filed an application for amendment. Mr. Ahmed, learned counsel appearing for the respondents, however, strenuously submits that the plaintiff having been failed to show the due diligence to be exercised by him as required under the law and after obtaining the certified copy of the order. After hearing, since the suit was commenced the impugned order has been rightly passed rejecting the prayer for amendment by the learned Munsiff. In this connection, the learned counsel has also relied on the ratio of the decision of the Apex Court rendered in the case of Ajendra prasadji N Pandey and another-Vs- Swami Keshavprakeshdasji N. and others reported in 2006(12) SCC.

I have considered the rival submissions made by the appearing parties and perused the materials available on record.

It is an undisputed facts that the suit was filed on 12.4.07 and the alleged sale of the suit property was done on 26.11.08 and the issues were framed on 17.7.09 and neither of the parties have yet submitted their affidavit in evidence in respect of their pleadings. When the suit is filed by a party challenging certain right it is not necessary for such party to go on enquiry about the status of the suit property and also to understand whether the suit property has been in the meantime transferred to somebody or not. In such a situation when the transfer was made only on 26.11.08 certainly the subsequent event affected the suit property and since none of the parties have submitted their affidavit on evidence, there is no question of causing prejudice to the parties more particularly, the defendants. On the other hand, the amendment appears to be necessary for effective adjudication of the dispute and to take care of the suit in the successful termination of the same. In view of the above discussion, the plaintiff has been able to show the case for causing amendment of the plaint and accordingly, the impugned order dated 19.2.10 stands set aside and quashed with the direction that the learned Munsiff shall allow the plaintiff to amend the plaint. After filing the application for amendment by the plaintiff, the defendant shall be entitled to file written statement/objection. The said objection shall be filed within a period of two months.

With the above direction and observation, this civil revision petition stands allowed.