

THE HIGH COURT OF TRIPURA AGARTALA

CRP 46 of 2015

Sri Ratan Debnath

S/O Late Radha Gobinda Debnath
Of Mohanpur, P.S. Ranirbazar,
District-Tripura West.

..... Petitioner.

VERSUS

1. Sri Bikash Chowdhury,

S/O Late Narendra Kr. Chowdhury,
Of Village-Nalgaria, P.S. Ranirbazar,
District-Tripura West
PIN-799008.

2. Sri Tapas Debnath

S/O Late Birendra Debnath
Resident of Melarmath, Gangail Road,
Agartala, Tripura West
PIN-799001.

..... Respondents

BEFORE THE HON'BLE MR. JUSTICE U. B. SAHA

For the petitioner : Mr. B Choudhury, Advocate
For the respondents : Mr. B Debnath, Advocate
Date of hearing & delivery
of Judgment & order : 31.07.2015.
Whether fit for reporting : **NO**

ORDER (ORAL)

The instant revision petition is filed by the petitioner, who was the defendant in T.S.137/2007 filed by the respondent-plaintiffs before the Civil Judge, Jr. Div. Court No. 2, Agartala, West Tripura challenging the order of rejection of application for amendment of written statement dated 09.01.2015 passed by the Civil Judge, Jr. Div. Court No. 2,

Agartala, West Tripura (**for short, "trial court"**) in Misc. 158 of 2013 arising out of T.S. 137/2007.

2. Considering the nature of the prayer made in the revision petition and as agreed to by the learned counsel for the parties, the instant revision petition is taken up for final disposal at the admission stage itself.

3. Heard Mr. B Choudhury, learned counsel for the petitioner as well as Mr. B Debnath, learned counsel for the respondents.

4. A suit was filed by the plaintiffs, respondents herein, for declaration of title and recovery of possession by evicting the defendant-petitioner from the land measuring 3 gandas and also for consequential relief against the defendant-petitioner, along with an application for interim injunction which was granted ex-parte on 16.11.2007. On 28.03.2009, ex-parte injunction granted in favour of the plaintiff was vacated by rejecting the application under Order XXXIX Rule 1&2 of the Code of Civil Procedure.

5. The petitioner could not file the written statement in time but subsequently it was filed denying the claim of the plaintiff-respondents. After filing the written statement when the suit was ready for filing of affidavit in chief of the defendants, it was found that some material facts were not stated in the written statement and then he filed an amendment petition seeking amendment of the written statement. In the said amendment petition it is also stated that as the written statement was filed hurriedly, some important and relevant facts could not be mentioned, though those facts are necessary for adjudication of the suit.

Upon receipt of the amendment petition filed by the defendant-petitioner, the trial court passed the impugned order rejecting the prayer for amendment of the written statement. Hence, this revision petition.

6. Mr. Choudhury submits that a court should be extremely liberal in granting the prayer for amendment of the pleadings unless such amendment would seriously prejudice the other side or cause injustice and/or irreparable loss to the other side. He further submits that in the instant case, the trial court while rejecting the prayer for amendment stated that there is no plea of the defendant-petitioner that the matter to be incorporated could not be raised by the defendant-petitioner before commencement of the trial and from the pleadings of the defendant-petitioner made in the instant petition, it is found that the facts sought to be incorporated by way of amendment was missed due to laches on the part of the defendant-petitioners. Except the aforesaid reason, no other reason has been given for rejecting the prayer for amendment.

7. He has also submitted that when inadvertently some facts could not be stated in the written statement, the defendant has the right to incorporate those facts in the written statement in support of his defence. Not only that, inconsistent pleas can be raised by the defendant in his written statement although the same may not be permissible in case of plaint. He further submits that the amendment of a written statement under Order VI Rule 17 is not a complete bar nor shuts out entertaining of any later application.

8. In support of his aforesaid contention he has placed reliance on a decision of the Apex Court in ***Chander Kanta Bansal v. Rajinder***

Singh Anand, (2008) 5 SCC 117 wherein the Apex Court considered the amended provisions of Order VI Rule 17 and held that, *“it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”*

9. He finally contended that the purpose of amendment of the written statement is nothing but elaboration of the facts stated earlier in the written statement.

10. He has also placed reliance on a decision of this Court in **Premada Rani Debnath and Ors., v. Jagadish Debnath and Ors., (2013) 2 TLR 257** wherein this Court discussed about the meaning of due diligence. He has also referred to the decision of the Apex Court in **Baldev Singh & Ors. etc. V. Manohar Singh and Anr. etc., AIR 2006 SC 2832.**

11. On the other hand, Mr. Debnath, while supporting the impugned order passed by the trial court, would contend that the defendant-petitioner has filed the amendment petition after five months of filing of the written statement only to delay the decision in the suit and the proposed amendment is nothing but an afterthought.

12. In **Premada Rani Debnath and Ors** (supra) while this Court was considering the provisions of Order VI Rule 17, particularly the proviso to the said rule, considered the case of **Smt. Bharati Das (Modak) v. Ranjit Kumar Das, AIR 2009 Gau. 23** wherein the Gauhati High Court held as follows:-

“In the instant case, there was no other alternative to the respondents except to file application for amendment of the plaint to meet the plea of the petitioners. In similar situation, the Delhi High Court in the case of Mrs. Suneel Sodhi and

Others v. M.L. Sodhi and Others, AIR 2004 Del.99 allowed the prayer for amendment. In that case, the suit was filed for partition and mesne profit and the plaintiffs prayed for amendment seeking to profound Wills by defendant and the said application for amendment was filed before commencement of the trial. The Delhi High Court, in the aforesaid case, held that as the Wills in question were claimed to have been discovered upon death of testator and the onus of proving said Wills rested on defendants and the plaintiffs had the opportunity of questioning Wills and raising objection as to their genuineness, as effect of Wills was that it sought to deprive the plaintiffs of their share and the said plea was not inconsistent with the plea of property being self-acquired property of testators. In the instant case also, the suit land sought to be partitioned is the land belonged to the predecessor-in-interest of the parties in the lis and the information regarding the execution of the registered Will in favour of the husband of the petitioner No. 1 and father of the petitioners No.2 and 3 had/has come to the notice of the respondents only after filing of the written statement in the suit by the petitioners herein. Therefore, the same cannot be overlooked by the respondents, rather they have the right to question the genuineness of the Will as the land involved in both the Will and the partition suit are same and it is also a settled law that development subsequent to filing of the suit can be raised in the amendment petition. In the instant case, the respondents wanted to include the subsequent development only in the plaint by way of amending the plaint and mere challenge of the Will for declaring the same as void would not change the nature and character of the partition suit. Applying the ratio laid down by the Apex Court in Ragu Thilak D. John (supra), particularly in para 6, it can be easily held that the amendment sought for in the instant case, where in the instant petition have alleged how they have been prejudiced by the proposed amendment."

13. This Court has gone through the impugned order passed by the trial court as well as the prayer for amendment and the petition filed by the parties. Upon going through the impugned order, this Court is of the considered opinion that the trial court should have considered that the proposed amendment which needed to be incorporated in the written statement could not be stated inadvertently and whether the

proposed amendment would in any way cause prejudice to the plaintiff-respondents but the trial court did not consider the said aspect.

14. The words “due diligence” have not been defined in the Code of Civil Procedure (**for short, ‘the Code’**). So, it would be proper for a court to take assistance from the general meaning of the said words from the dictionary. According to *Black's Law Dictionary, Sixth Edition*, “due diligence” means such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. According to *Oxford Dictionary*, (Edn. 2006), the word “diligence” means careful and persistent application or effort. “Diligent” means careful and steady in application to one’s work and duties, showing care and effort. The Apex Court also considered the words “due diligence” in **Chander Kanta Bansal** (supra).

15. In **Baldev Singh** (supra) the Apex Court while considering an order rejecting an application for amendment of a written statement, observed that, *“it is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side.”*

16. In this connection, reference can be made to a decision of the Privy Council in **Ma Shwe Mya v. Maung Mo Hnaung (AIR 1922 PC 249)** in which the Privy Council observed:

“All rules of courts are nothing but provisions intended to secure the proper administration of

justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

17. The Apex Court in **Baldev Singh** (supra) also observed that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. On perusal of Order XI Rule 17 of the Code, it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously.

19. In the instant case, the suit was already delayed as the same was dismissed thrice, firstly on 23.06.2008, secondly on 16.04.2011 and thirdly on 24.01.2013 and sometimes the case was also restored even without providing opportunity to the defendant-petitioner. Not only that, even the suit was delayed because of seeking time again and again by the plaintiff-respondents.

20. In **Baldev Singh** (supra) the Apex Court also observed that the powers of the Court are wide enough to permit amendment of the written statement by incorporating an alternative plea of ownership in the application for amendment of the written statement. Not only that,

even inconsistent pleas can be raised by the defendants in the written statement although the same may not be permissible in case of plaint. In an amendment petition filed by the plaintiff, the Court is to see as to whether the nature and character of the suit would be changed by the proposed amendment or not. For amendment of the written statement the Court is to see whether the proposed amendment would help the defendant in placing his case of defence and as to whether the plaintiff would be prejudiced or not. In the instant case, the proposed amendment would in no way prejudice the plaintiff-respondents.

21. It is also by this time settled that a person in his capacity as defendant can raise inconsistent pleas in his written statement to defeat the suit of the plaintiff. Thus, the whole question would depend upon the pleadings of the parties, nature of the suit, the nature of the deed, evidence led by the parties in the suit and other attending circumstances.

22. In the instant case, the plaintiff filed the suit for declaration of title and recovery of possession by evicting the defendant from the suit land. Therefore, the defendant should be provided opportunity so that he can raise his legitimate plea to defeat the prayer of the plaintiff.

23. There is no doubt that the Court should not allow each and every prayer for amendment or addition of parties in a routine manner without considering the contents in the petition as to whether the proposed amendment is necessary for deciding the controversy between the parties. But the Court is to see if the prayer for amendment is rejected only on the basis of an objection raised by the opposite

parties or whether the proposed amendment could not be mentioned in the original petition due to inadvertence.

24. Considering the entire facts and circumstances, this Court is of the considered opinion that the learned trial court failed to consider the purpose of Order VI Rule 17 of the Code.

25. Accordingly, the order dated 09.01.2015 passed by the trial court in Misc. 158/2013 arising out of TS 137/2007 is hereby set aside. The prayer for amendment is allowed subject to payment of cost of Rs.2,000/- only to the contesting plaintiff-respondents herein, within a period of one month from the date of this order. The petitioner is also directed to file the amended petition, within a period of one month from today in the trial court without fail.

26. The instant revision petition is allowed and accordingly stands disposed.

JUDGE

lodh