



GAHC010022252015

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/437/2015

MRS. SANJIDA CHOUDHURY and 3 ORS
W/O MD. ANWAR CHOUDHURY, VILL. and P.O. GHOGRAPAR, DIST-
NALBARI, ASSAM, PRESENT ADDRESS- R/O 6TH MILE, KABARSTHAN
ROAD, H/NO.31, P.O. and P.S. DISPUR, GHY-33, DIST- KAMRUP METRO,
ASSAM

2: DR. RANUMANI CHOUDHURY
W/O MUSLEHUDDIN AHMED
R/O 6TH MILE
KABARSTHAN ROAD
GUWAHATI
P.O. and P.S. DISPUR
DIST- KAMRUP METRO
ASSAM

3: MD. HASHIM ALI
S/O LT. AZIM ALI
R/O SIJUBARI
HATIGAON
GUWAHATI
DIST- KAMRUP METRO
ASSAM

4: ANWAR CHOUDHURY
S/O LT. RAFIQUE CHOUDHURY
R/O BAGHAMARA
P.S. GHOGRAPAR
DIST- NALBARI
ASSA

VERSUS

KUKOI CHETIA and 4 ORS.
S/O SRI HAREN CHETIA, R/O SIX MILE, OPP. HITESWAR SAIKIA COLLEGE,



P.O. KHANAPARA, GHY-22, DIST- KAMRUP METRO, ASSAM

2:MUKUT ALI
S/O LT. MAFIZ ALI
R/O H/NO.38
DARANDHAR
SIX MILE
NEAR HITESWAR SAIKIA COLLEGE
P.O. KHANAPARA
P.S. DISPUR
GHY-22
DIST- KAMRUP METRO
ASSAM

3:MUSSTT. FATEMA BIBI LASKAR
W/O ENAMUL LASKAR
R/O H/NO.130
DARANDHAR
SIX MILE
NEAR HITESWAR SAIKIA COLLEGE
P.O. KHANAPARA
P.S. DISPUR
GHY-22
DIST- KAMRUP METRO
ASSAM

4:MD. NASIR ALI
S/O LT. TOBOK ALI
R/O H/NO.25
DARANDHAR
SIX MILE
NEAR HITESWAR SAIKIA COLLEGE
P.O. KHANAPARA
P.S. DISPUR
GHY-22
DIST- KAMRUP METRO
ASSAM

5:MD. ENAMUL HAQUE LASKAR
S/O LT. ARJUMOND ALI LASKAR
R/O DARANDHAR
GUWAHATI
P.S. DISPUR
KAMRUP METRO
ASSAM

6:MD. ABDUL ALI @ PAINTER
S/O LT. D. MOHAMAD



R/O NO.109
PURANABASTI
F.A. AHMED ROAD
DARANDHAR
P.O. KHANAPARA
P.S. DISPUR
GHY-22
DIST- KAMRUP METRO
ASSA

Advocate for the Petitioner : MS.S PAUL

Advocate for the Respondent : MS.R HUSSAINR-2

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT

Date : 26-09-2022

Heard Mr. P.C. Dey, the learned counsel appearing on behalf of the petitioner. Also heard Mr. R.K. Bhuyan, the learned counsel appearing on behalf of respondent No.1 and Mr. A Sattar, the learned counsel appearing on behalf of respondent No.2.

2. This is an application filed under Article 115 read with Section 151 of the Code of Civil Procedure, 1908 challenging the order dated 05.08.2015 passed by the Munsiff No.1, Kamrup (M) at Guwahati whereby the petition No.4184/2015 filed in Title Suit No.384/2012 by the plaintiff for amendment of the plaint was allowed.

3. At the outset, the learned counsel for the petitioner had submitted that the instant proceedings ought to have been a proceeding under Article 227 of the Constitution taking into

account the limited scope and ambit of Section 115 post the 2002 Amendment. Taking into account the said submission and also to the effect that the matter has been pending since long before this Court and it would not be proper to dismiss the petition on the ground of maintainability, this Court converts the instant proceeding to a proceeding under Article 227 of the Constitution.

4. The facts of the instant case is that the respondent No.1 herein had filed a suit against one Abdul Ali and three others. The case of the plaintiff in the said suit as would appear from the unamended plaint is that the plaintiff is the owner and the title holder with possession in respect to a plot of land measuring 4 kathas covered by Dag No.775 old/3995 (new) of KP Patta No.56/47 (old)/762 (new) in Mouza Beltola village Hengrabari under P.S Dispur in the district of Kamrup, Assam. The said land have been more specifically described in Schedule A to the plaint. It is the case of the plaintiff that the plaintiff had purchased the said land in the year 1986 vide a registered sale deed bearing deed No.2701 dated 27.11.1986 from its original owner and pattadar Md. Nasir Ali, the proforma respondent No.4. It has also been mentioned that as in the original deed of sale there were certain mis-description of the western boundary there was a rectification deed bearing deed No.5744 dated 19.06.2012.

5. The case of the plaintiff further is that the father of the plaintiff, one Sri Haren Chetia time to time developed the land

by filling earth and the same was looked after by the proforma defendant No.4 on behalf of the plaintiff. There was no dispute over the said land till 14.01.2012 when the plaintiff employed some labourers to repair and clean the existing boundary wall over the suit land, a group of 20 (twenty) person lead by the defendant No.1 Md. Abdul Ali also known as painter obstructed them and threatened with dire consequences. It was alleged that the miscreants tried to illegally grab the land by erecting bamboo posts and earth filling along with the land of the defendant No.3. Having come to know about the same the plaintiff rushed to the suit land and tried to resist and object to the illegal acts of the defendant Nos.1 and 2 and their men. Upon objection being raised the defendant Nos.1 and 2 claiming themselves as the owner of the land of the defendant No.3 as well as the suit land forcefully proceeded with the earth filling works as well as erecting the bamboo fencing surrounding the suit land. It has averred in the plaint that the defendant Nos.1 and 2 informed the plaintiff that the defendant No.3 had sold the entire land including the suit land to the Defendant Nos.1 and 2. Consequently, the plaintiff filed an FIR dated 16.01.2012 before the Officer-in-charge, Dispur Police Station which was registered as Non-FIR case bearing No.6/12 under sections 107/145 Cr.P.C.

6. The plaintiff has further alleged that while the said proceeding was pending before the authorities the defendants erected RCC pillars and filled up the suit land with earth. Though the plaintiff tried to resist them but the defendants

and their men outraged the plaintiff. As a result, the plaintiff again filed another FIR on 15.02.2012 against the illegal activities of the defendants.

7. It is under such circumstances that the plaintiff had filed the instant suit seeking a decree declaring right title and interest over the suit land described in the Schedule A appended to the plaint; for recovery of possession of the schedule A land by evicting the defendants as well as demolishing the unauthorised constructions made by them and for permanent injunction against the defendants and their men, agents from disturbing the peaceful possession of the plaintiff over the suit land described in Schedule A. Upon the said being filed which was registered and numbered as Title Suit No.384/2012, an application was filed by the petitioners herein under Order I Rule 10 seeking impleadment on the ground that they have interest over the suit land.

8. The trial Court vide an order dated 22.01.2013 allowed the said application seeking impleadment of the petitioners as defendant Nos.4(i), 4(ii), 4(iii) & 4(iv) to the said suit. Thereupon the said petitioner as defendant Nos.4(i) to 4(iv) filed a written statement. In the said written statement, the said defendants alleged that the original pattadar of the land covered by patta No.56 (old)/43(new), Dag No.775 of village Hengrabari, Mouza Beltola were Md. Rafique Ali, Harun Ali and Md. Nasir Ali who sold a plot of land measuring 1 bigha 3 kathas and 16 lechas to Md. Enamul Hoque son of late Arjum

Ali Laskar vide sale deed No.3989 in the year 1973. The said land was subsequently mutated in the name of Enamul Hoque Laskar and he was in possession of the same. It was further mentioned that said Enamul Hoque Laskar gave a Power of Attorney to Smti. Purnima Rabha and Md. Nasir Choudhury thereby authorising the said persons to manage, supervise, to enter into an agreement for same, to sale the plot of land, to receive the money in advance etc with respect to the land measuring 1 bigha, 3 katha and 16 lechas covered by Dag No.775 (old)/4243 (new), Patta No.239 (old)/1874 (new) of village Hengrabari, Mouza Beltola in the district of Kamrup. It was also mentioned that the K.P Patta No.56 (old) was subsequently renumbered from K.P Patta No.47 to K.P. Patta No.239, then to K.P. Patta No.1874 and thereafter changed to K.P. Patta No.762. Similarly, the Old Dag No.775 was renumbered as Dag No.4243 and thereafter Dag No.3995.

9. It was further mentioned that the said attorneys being Smti. Purnima Rabha and Md. Nasir Choudhury sold 2 kathas 6 lechas (6.13 arc) of land to Dr. Ranumani Choudhury. Vide sale deed No.3627/2011. Similarly, the said attorneys sold another plot of land measuring 2 kathas (5.35 arc) to Mrs. Sanjida Choudhury vide sale deed No.3625/2011. The attorneys also sold 3 kathas of land to Md. Hashim Ali vide a sale deed No.3626/2011 and another plot of land measuring 1 katha 10 lechas to Md. Anowar Choudhury vide sale deed No.2608/2012. It is pertinent to mention that the purchasers of the Deeds were the defendant Nos.4(i) to 4(iv).

10. It has been mentioned that the said defendant Nos.4(i) to 4(iv) by virtue of the said sale deeds took possession of 1 bigha, 3 katha and 16 lechas of land and also constructed the boundary wall surrounding their own land as well as the Assam Type House with electricity connection and the said premise has been given on rent to their tenants and they are in possession of the said land.

11. Further to that, it has been mentioned that the defendant Nos.4(i) to 4(iv) have also got their names mutated in respect to the said land on 30.03.2012 and 03.09.2012. However, in the first week of January, 2012 the defendant Nos.4(i) to 4(iv) came to from the defendant No.1, Md. Abdul Ali that the plaintiff engaged some labourers for alleged repairing and cleaning of the boundary wall of the defendant Nos.4(i) to 4(iv) and immediately the defendant No.4(ii) came to the spot and asked the plaintiff what was going on and then the plaintiff replied that he was not working in the land of the defendant Nos.4(i) to 4(iv). Further to that, it was mentioned that the said defendant Nos.4(i) to 4(iv) have the absolute title over the said land and the plaintiff had no possession over the said land. It was mentioned that the case filed by the plaintiff was to grab a portion of the land belonging to the defendant Nos.4(i) to 4(iv) by a rectification deed No.5747/2012 dated 19.06.2012 by cheating and false representation to the original owner Md. Nasir Ali. It was also mentioned that Md. Nasir Ali and Haron Ali also filed a case being Dispur PS Case No.1173/2012 against the plaintiff and his father and the said

case is pending. On the basis of the above, the defendant Nos.4(i) to 4(iv) submitted that the suit be dismissed.

12. In view of the said averments made in the written statement, the plaintiff filed an application under Order VI Rule 17 read with Section 151 of the Code for amendment of the plaint. By the said application the plaintiffs sought for insertion of paragraph 9 (A), 9(B), 9(C) & 9(D). The plaintiff also sought for substitution of paragraph 10 by a new paragraph; for amendment of paragraph No.11 & 12; renumbering of the proforma defendant No.4 to proforma defendant No.6; for amendment of paragraph No.14 and addition of a relief by inserting an additional relief a(i).

13. To the said application written objections were filed by the defendant Nos.4(i) to 4(iv) alleging inter alia that the amendment which have been sought for would bring into forth a new cause of action and as such, the amendment sought for was not permissible in law. It was also mentioned that if the amendment petition is allowed it would totally alter the cause of action and hence the amendment petition ought to be dismissed.

14. The trial Court vide an order dated 05.08.2015, however, allowed the said amendment application and directed for filing of the amended plaint. It is also seen from the records that the amended plaint has also been filed before the Court below on 25.08.2015. The petitioners who were the Defendant Nos.4(i) to 4(iv) being aggrieved by the said order dated 05.08.2015

filed the instant proceedings and this Court had issued notice and stayed the further proceedings of Title Suit No.382/2012 pending before the Court of the Munsiff No.1, Kamrup (M), Guwahati. The said interim order has been continuing since then.

15. I have heard the learned counsel for the parties and have also perused the materials on record.

16. The learned counsel for the petitioner submitted that the amendment which have been sought for and allowed by the trial Court vide the impugned order dated 05.08.2015 would lead to introducing of new cause of action which the Court below have duly taken note of but surprisingly allowed the said amendment. He submitted that the Court below did not take into consideration the well settled principles of law as to when an amendment of the pleadings should be allowed. He submitted that in the initial plaint there was not a single averment made as regards the defendant Nos.4(i) to 4(iv) however, by way of the amendment sought for which was allowed, the entire case has been set out as against the defendant Nos.4(i) to 4(iv). In that regard the learned counsel has relied upon the judgment of the Supreme Court rendered in the case of **Rajkumar Gurawara (Dead) Thr. Lrs vs M/S. S.K.Sarwagi & Co. Pvt. Ltd. & Anr** reported in **(2008) 14 SCC 364**, wherein the Supreme Court had observed that it is the settled law that the grant of application for amendment be subject to certain conditions, namely, where the nature of suit

would change by permitting amendment, and when the amendment could result in introducing a new cause of action and intends to prejudice the others. He further submitted that when allowing amendment application defeats the law of limitation, such amendment should not be allowed.

17. On the other hand, Mr. RK Bhuyan, the learned counsel appearing on behalf of the plaintiff/respondent No.1 submitted that the petitioners herein who were subsequently impleaded as the defendant Nos.4(i) to 4(iv) were nowhere in the picture and as such at the time of filing of the plaint there was nothing mentioned in the original plaint. He submits that on 14.01.2013 the defendants No.1 & 2 claimed themselves to be the owners of the land on the ground that the defendant No.3 have sold the suit land to the defendant Nos.1 & 2. It is on the basis of that the suit was filed. However, from the averments made in the written statement, more particularly in paragraph No.17(i), it would be seen that the defendant No.1 & 2 were acting at the behest of the defendant Nos.4(i) to 4(iv). Taking into account that these aspect of the matter has come into light subsequent to the filing of the written statement, it had become necessary for the proper adjudication of the suit that the amendments have been sought for determining the real question in controversy.

18. The learned counsel further submitted that the cause of action for the suit was the denial of the title of the plaintiff over the suit land and the forceful dispossession of the plaintiff

from the suit land and as such, there was no new cause of action but it was on account of coming to learn on the basis of the written statement filed by the defendant Nos.4(i) to 4(iv) that it was the said defendants at whose behest the defendant Nos.1 & 2 were acting, it has become necessary for amendment of the plaint. He further submitted that what is required as per Order VI Rule 17 is that such amendment should be allowed which are necessary for determining the real question in controversy between the parties. The learned counsel submitted that the real question in controversy between the parties is as regards whether the plaintiff has right title and interest over the suit land and as to whether the plaintiff is entitled to recover khas possession of the suit land. He further submitted that the aim and objective behind the incorporation of Order VI Rule 17 is to avoid multiplicity of proceedings and if in the circumstances the amendment sought for is not allowed, it would result in a plaint having no cause of action against the defendant Nos.4(i) to 4(iv) at whose behest the defendant Nos.1 & 2 have dispossessed the plaintiff on 14.10.2012.

19. Mr. A Sattar, the learned counsel appearing on behalf of the proforma respondent No.2 submits that he has nothing to submit taking into account that this is an amendment application filed by the plaintiff which was allowed and it is the defendant Nos.4(i) to 4(iv) who are aggrieved.

20. Upon hearing the learned counsel for the parties and

upon perusal of the materials on record, this Court would like to take note of a recent judgment of the Supreme Court in ***Life Insurance Corporation of India Vs. Sanjiv Builders Pvt. Ltd & Anr.*** reported in ***(2022) SCC Online SC 1128***, wherein the Supreme Court laid down the various parameters as regards the exercise of jurisdiction under Order VI Rule 17 of the Code. Paragraph 70 of the said judgment being relevant is quoted herein below:

70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side

and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- (ii) the amendment changes the nature of the suit,*
- (iii) the prayer for amendment is malafide, or*
- (iv) by the amendment, the other side loses a valid defence.*

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to

disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897)

21. A perusal of the above quoted judgment of the Supreme Court would transpire that all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. It was observed that the prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversy between

the parties and to avoid multiplicity of proceedings provided the amendment does not result in injustice to the other side and/or by way of amendment the parties seeking amendment does not seek to withdraw any clear admission made by the parties which confers a right on the other side and the amendment does not raise a time bared claim resulting in divesting of the other side of a valuable accrued right.

22. It was further observed that in dealing with a prayer for amendment of the pleadings the Court should avoid a hyper technical approach and is ordinarily required to be liberal especially where the opposite party can be compensated by costs. It was observed that where the amendment could enable the Court to pin pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed. It was observed that amendment may be justifiable allowed where it is intended to rectify the absence of material particulars in the plaint. Further to that, it was observed that the delay in applying for amendment alone is not a ground to disallow the prayer. It was observed that where the aspect of delay is arguable the prayer for amendment could be allowed and the issue of limitation framed separately for the decision. In paragraph 70(xi), the Supreme Court observed that where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The Court is required to bear in mind that the opposite parties would have a chance to meet

the case set up in the amendment, as such, where the amendment does not result in irreparable prejudice to the party, or divest the opposite party of any advantage which it has secured as a result of an admission by the parties seeking amendment, the amendment is required to be allowed. It was also observed that equally where the amendment is necessary for the Court to effectually adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

23. In the backdrop of the above, if this Court takes into consideration the facts involved in the instant case, it would be seen that the plaintiff have on the basis of a deed of sale and the subsequent rectification deed claimed right, title and interest over the schedule A land. It is the specific allegation in the plaint that on 14.10.2012 the plaintiff was dispossessed by the defendant Nos.1 and 2 at the behest of the defendant No.3. So the real question in controversy between the parties is as to whether the plaintiff has right title and interest over the suit land described in Schedule A to the plaint and as to whether the plaintiff is entitled to recover possession of the suit land as described in Schedule A to the plaint. A perusal of the said plaint would show that there was no averment made against the petitioners herein. Thereupon the petitioners as stated in their written statement came to learn about the plaintiff taking steps on 14.10.2012 from the defendant No.1 and claimed a part of the suit land. It is on the basis thereof that the petitioners sought for impleadment in

the suit on the ground that their rights would be affected if any declaration of right title and interest is given along with recovery of possession without the petitioners being made parties to the suit.

24. The trial Court permitted such impleadment and thereupon the petitioners/defendant Nos.4(i) to 4(iv) have filed their written statement stating that they have right over the suit land and that the defendant No.1 also informed the petitioners that the plaintiff tried to trespass upon the suit land. It is on the basis of the said averments made in the written statement, wherein new facts were disclosed whereby the defendant Nos.4(i) to 4(iv) claimed ownership over the suit land, the plaintiff have sought for amendment of the plaint.

25. As already stated herein above, the plaintiff have sought for declaration of right title and interest and for recovery of possession. It would seen that if amendment so sought for is not allowed, it would not only render the suit filed by plaintiff over the suit land useless but would also lead to multiplicity of proceedings, taking into account that the plaintiff would have to again resort to filing another suit seeking similar declaration against the defendant Nos.4(i) to 4(iv). Therefore, for deciding the real question in controversy between the parties, it is necessary that the amendment sought for is allowed which have been rightly done so by the Court below. It is also relevant to take note of that trial has not commenced in

the said suit and permitting such amendment would give an opportunity to the defendant Nos.4(i) to 4(iv) to file an additional written statement to rebut the statements made in the amended plaint. Therefore, this Court does not find that there is any prejudice which would be caused to the petitioners in allowing the amendment application.

26. In view of the above, this Court therefore is of the opinion that the order dated 05.08.2015 does not call for any interference that to in a proceeding under Article 227 of the Constitution. Accordingly, the petition stands dismissed.

27. In view of the order so passed the order dated 05.10.2015 whereby the further proceedings of Title Suit No.384/2015 was stayed is vacated and the parties herein are directed to appear before the trial Court on 03.11.2022, on which date the trial Court shall pass appropriate orders directing the petitioners/defendants to file their additional written statement, if they wish so.

28. With the above observations and directions, the instant petition stands disposed off.

29. Before parting with the record, this court would observe that during the pendency of the instant proceedings as the further proceedings in Title Suit No.384/2012 were stayed, the Trial Court shall take into consideration the said aspect of the matter, if an application is filed seeking substitution of the



defendant No.3, who as per the office note and Postal Department endorsement, had been mentioned as deceased.

JUDGE

Comparing Assistant