IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

CO 45 of 2021
Dulal Chandra Giri.
vs.
Tapash Giri & Anr.

For the petitioner : Mr. Sandip Das,

For the opposite parties : Mr. Gautam Das,
Mr. Tapan Kumar Maity.

Hearing concluded on: 20.07.2023
Judgment on: 10.10.2023

Shampa Sarkar, J.:-

1. This revisional application was heard along with C.O No. 43 of 2021 and CO No. 44 of 2021, as common questions of law and fact were involved in all the revisional applications. However, as the order impugned in each of the revisional application arise out of separate pre-emption cases and the pre-emptees are different, the judgments are delivered separately in respect of each of these civil revisional applications.

2. The revisional application arises out of an order No. 18, dated February 18, 2020 passed by the learned Civil Judge (Junior Division), Kakdwip, in Misc. Case No. 10 of 2018(8).

3. By the order impugned, the learned court below rejected an application for amendment of the pre-emption application. The amendment

application was filed on January 2, 2020, after trial had commenced and the evidence had substantially progressed.

4. The learned court was of the view that at the stage when the cross-examination of opposite party no.1 was near completion, the proviso to Order VI Rule 17 would be a bar in allowing the amendment. The petitioner failed to satisfy the court that in spite of due diligence, the facts sought to be incorporated by way of the amendment could not be raised before the trial had commenced. Further, the learned court held that the corrections sought to be inserted in the schedule of the pre-emption application were not necessary as the mistake in the RS Dag No. had been admitted by the opposite party no.1 in his cross-examination. The opposite party no.1 clearly admitted that the suit land was situated at CS dag no. 217 corresponding to RS Dag No. 768/1248 corresponding to LR dag no. 901. Such evidence would be taken into account, at the time of trial. The court observed that as the impugned deed of sale bearing no. 4520 dated December 28, 2017 Exhibit -1, mentioned that RS dag no. 217 corresponded to LR dag no. 901, the amendment would amount to indirect rectification of the schedule of the deed.

5. Learned Advocate for the petitioner submitted that when it was an admitted position that the CS dag No was wrongly mentioned as RS dag No. 217 and the actual RS dag no. was 768/1248, was not incorporated. Such bona fide error in the schedule of the pre-emption case, ought to be rectified, or else, the said defect may lead to difficulty in identification of the suit property and further complications may arise at the time of execution.

6. Learned Advocate further submitted that when the opposite party no.1 had himself admitted in his cross-examination that CS dag no. 217 corresponded to RS dag No.- 768/1248 and L.R plot no. 901, the formal application for amendment should be allowed and the application for pre-emption should be amended accordingly, in order to clear all doubts with regard to identification of property in question. That the amendment was neither introduction of a new cause of action nor withdrawal of any admission. It was also not a case that a contrary plea was sought to be inserted by the amendment. It was merely an attempt on the part of pre-emptor to correct the schedule of the property in the pre-emption application, for proper identification of the property sought to be pre-empted.

7. Learned Advocate for the opposite party submitted that the belated amendment was rightly disallowed. The pre-emption case was filed sometime in 2018. The pre-emptor had adequate opportunity to obtain the certified copy of the record of rights and apply for amendment before commencement of trial. It was the pre-emptor's duty to bring on record such facts within a reasonable time. Once the pre-emptor's evidence was recorded and the pre-emptor was discharged, such application could not have been entertained. Moreover, the evidence of OP No.1 was near completion and the amendment was brought only to fill up the lacunae.

8. Having heard the learned advocate for the respective parties, this court is of the view that the learned court below did not commit any irregularity in rejecting the application. Even if the proviso to Order VI Rule 17 of the Code of Civil Procedure is not considered, the amendment is not

necessary for proper adjudication of the dispute between the parties. The petitioner filed a pre-emption case as a bargadar on the ground of bargadarship. According to the petitioner/pre-emptor, he was a bargadar under one Mr. Chittaranjan Sasmal, opposite party no.2. His name was duly recorded in LR Khatian No. 891 under Chittaranjan Sasmal. The opposite party no.1 and the petitioner were brothers. The opposite party No.1 started disturbing the petitioner during cultivation in the property in question and the petitioner filed Title Suit No.-388 of 2017 before the learned Civil Judge (Jr. Division) Kakdwip. An order of injunction was passed on October 26, 2017 restraining the defendants therein i.e., the brother of the petitioner from interfering with the right, title and possession of the petitioner in respect of the property in question. Suppressing the pendency of the suit, the order passed in the suit and also the fact that the petitioner was a bargardar, under the opposite party no. 2, the opposite party no.2 illegally transferred/sold the suit plot to the opposite party no.1(brother of the petitioner).

9. Under such circumstances, the petitioner was compelled to file a pre-emption application. The deed of sale was executed and registered on December 28, 2017. The petitioner categorically mentioned that he was in possession of the property in question and continued to be in possession. During the pendency of the suit, the petitioner applied for the certified copy of the RS record of rights. On obtaining the certified copy, the petitioner realized that a mistake had cropped up in the schedule of the property mentioned in the pre-emption application. CS dag No. 217 was wrongly mentioned in the schedule of the application as RS dag no. 217. The

corresponding RS dag no. 768/1248 was not mentioned. Finding no other alternative, the petitioner filed the application for amendment of the application.

10. The ground for delay in filing the amendment application was that the certified copy of the RS record was not in the possession of the petitioner, when the pre-emption case was filed. The case was filed on the basis of the schedule mentioned is the deed of transfer. In the deed of transfer, CS dag no. 217 was mentioned as RS dag no. 217 and the corresponding RS dag No. 768/1248 was missing. According to the petitioner, the facts that the CS dag no. 217 was converted to RS dag no. 768/1248 corresponding to LR dag No. is 901, should be incorporated in the application and its schedule, for the ends of justice.

11. Having gone through the records, this court finds that in the pre-emption application and in the impugned deed, LR plot no. 901 had been mentioned. The certified copy of LR Khatain No. 891 was marked as Exhibit -2 at the instance of the petitioner. The certified copy of the information slip in respect of LR plot no. 901 was marked as Exhibit –3. The original copy of Barga Praman Patra was marked as Exhibit – 4, Bhag chas receipt was marked as Exhibit – 5. During cross-examination, the petitioner had deposed that the instant pre-emption case was filed in respect of LR Plot no. 901. He stated that LR Plot no. 901 was derived from RS dag no. 768/1248. That the pre-emption case was filed in respect of 50 decimals of LR dag no. 901. The petitioner further deposed that he was not in a position to show whether he was a bargadar in respect of RS dag No. 217. In my opinion, this statement was sought to be explained by seeking to insert the correct RS

dag No in the application for pre-emption. However, the petitioner had exhibited documents to establish his right of bargadarship in respect to the land belonging to Mr. Chittaranjan Sasmal (opposite party no. 2) corresponding to LR plot no. 901. In the cross-examination, the OP No. 1(Pre-emptee) had clearly admitted that CS dag No. 217 corresponds to RS dag No. 768/1248 which corresponds to LR plot no. 901. Answer to question 1 of such cross-examination is relevant for such purposes.

12. Under such circumstances, when both parties admitted that the pre-emption case is in respect of LR plot no. 901 which was derived from RS dag No. 768/1248 and the learned court had taken cognizance of such facts, in the order impugned, this Court is of the view that the belated application for amendment will only set the clock back and is not necessary for adjudication of the issue involved in the application for pre-emption. The plot can be identified on the basis of the LR dag number. The adjudication by the learned trial Judge could be easily based on the evidence of the parties and the admission of the OP no.1 with regard to the identification of the plot in question.

13. The Apex Court in the case of ***Andra Bank vs. ABN Amro Bank N.V. and others*** reported in ***2007 (6) SCC 167*** observed that delay was no ground for refusal of a prayer for amendment. The only question to be considered by the Court was whether such amendment would be necessary for a decision on the real controversy between the parties in the suit. In the case in hand the amendment is not necessary. The Hon'ble Apex Court in the case of ***Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and others*** reported in ***(2007) 6 SCC 737,*** held that if the

amendment enabled the Court to pin-pointedly consider the real dispute between the parties and helped to decide the case more satisfactorily, the amendment ought to be allowed. In this case, the dispute can be decided based on the LR Dag no., LR records and the depositions, especially the admission with regard to CS and RS Dag numbers.

14. The revisional application fails, the learned court below shall decide the pre-emption application on the basis of the records and evidence of the parties. The general power of superintendence under Article 227 of Constitution of India is limited and need not be invoked in the facts of this case as the learned court below had given his reasons for rejecting the application for pre-emption. While passing the order impugned, the learned court below exercised jurisdiction vested upon him by law. The provisions of law were applied. The evidence was appreciated and the conclusion was arrived at with cogent reasons. Apart from the aspect of delay, the learned court below also went into the materials on record, in order to come to the finding that the fact that the RS dag number was wrongly mentioned in the pre-emption application was available in evidence. Moreover, the land corresponds to LR plot not 901. The same is available in the pre-emption application and in the evidence. The evidence of the parties and the description of the suit plot in the schedule as LR plot no. 901 would be adequate for the court to identify and decide the matter.

15. In the decision of ***Sadhana Lodh v. National Insurance Co. Ltd.,*** reported in ***(2003) 3 SCC 524***, the Hon'ble Apex Court held as follows:-

> **" 7.** The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see

whether an inferior court or tribunal had proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision."

16. In the decision of ***M/s. Puri Investments v. M/s. Young Friends and Co. and Others***, reported in ***2022 SCC OnLine SC 283,*** the Hon'ble Apex Court held as follows:-

"14.

******

We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:—

(i) Erroneous on account of non-consideration of material evidence, or

(ii) Being conclusions which are contrary to the evidence, or

(iii) Based on inferences that are impermissible in law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find

out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum."

17. Under such circumstances, the revisional application is dismissed.

18. There will be no order as to costs.

19. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)