

28.08.2023
Court No. 19
Item no.18
CP/GB/SRM

C.O. No. 2853 of 2022
Indian Oil Corporation Limited

Vs.

Ambe Plywoods Private Limited & ors.

Ms. Urmila Chakraborty
Mr. Amit Meharia
Ms. Paramita Banerjee
Ms. Amrita Das

....for the petitioner.

Mr. Soumabho Ghose
Mr. Pushan Kar
Mr. Sagnik Majumdar
Ms. Ananya Das

....for the opposite parties.

This revisional application arises out of orders dated June 2, 2022 and June 29, 2022, passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore in Title Suit No. 39 of 2000. By the order dated June 2, 2022 an application under Order 1 Rule 10 of the Code of Civil Procedure was allowed and the opposite party no. 1 was substituted in the plaint, in place of Rupa Ghosh and Supratik Ghosh, the original plaintiffs.

By the order dated June 29, 2022, the application under Order 6 Rule 17 of the Code of Civil Procedure filed by the substituted plaintiff was allowed.

The petitioner submits that after seven years from the alleged transfer of the suit property, the

application for addition was filed. It is further submitted that the learned court below could not have substituted the opposite party no. 1 in place of the original plaintiffs as the presence of the original plaintiffs were required for effective adjudication of the suit.

That the cross-examination of PW-2 was continuing and the same was not complete, when the order of substitution was passed. Unless an opportunity was given to complete the cross-examination of PW-2, the petitioner would suffer irreparable loss and injury. According to the petitioner, rent was being paid in favour of one, namely, Supratik Ghosh and the documents to that effect have been annexed to the revisional application in support of such claim. Such payment was made even after the transfer of the property to the opposite party No.1.

It is submitted that after the transfer of the property in favour of opposite party no. 1, there has been attornment of the tenancy as cheques in the name of Supratik Ghosh had been paid on account of rent and those were encashed. The property was a thika property and the petitioner was a direct tenant under the government. This fact was necessary to be brought on record and cross-examination of PW-2

ought to continue. Absence of the original plaintiffs would result in denial of such opportunity.

The learned counsel for the petitioner refers to some of the orders passed in the suit in order to substantiate that dates had been fixed in the past for cross-examination of P.W.2 in the suit. Order dated March 24, 2011 and earlier orders have been placed before this court, which indicate that cross-examination of P.W.2 was going on. The learned counsel refers to the deed of conveyance by which the present opposite party no.1 acquired right, title and interest in respect of the suit property. It is stated that the deed incorporated several clauses indicating that the suit was pending in respect of the property in question. Contention is that the transfer was hit by the doctrine of lis pendens. According to the learned counsel, the application for addition of party was filed belatedly on February 26, 2021, almost seven years after the transfer was made. Information of such transfer was not given to the defendant.

The records at present reveal that P.W.1 is Supratik Ghosh the original plaintiff No.2, whose cross-examination was closed on March 28, 2007. P.W.2 is Vishal Jhajharia, whose evidence was closed on March 23, 2023 and P.W.3 is Sarbajit Dutta, whose examination-in-chief is going on. The opposite

party No.1 has filed the evidence of P.W.2 through learned counsel.

Although the orders indicate that dates were fixed for cross-examination of P.W.2, there is nothing on record to indicate that the said P.W.2 was anyone apart from Vishal Jhajharia.

Having heard the learned counsel for the respective parties, it appears to this Court that the order dated June 2, 2022 was passed on an application under Order 1, Rule 10 of the Code of Civil Procedure. The said application, in effect, was an application for substitution of the purchaser in place of the plaintiffs, upon devolution of interest. Substitution of a party, upon devolution of interest, is permissible in law and the application was allowed upon payment of cost. Such cost was tendered by the defendant. Although the application filed by the transferee was captioned as one under Order 1 Rule 10 read with Section 151 of the Code, in effect, the applicant prayed for substitution in place of the original plaintiffs.

It is well-settled, that the averments in the application and the contents thereof are to be looked into while deciding the true intent and purport of such application and the reliefs claimed. Nomenclature would not make any difference. Although the application was captioned as one under

Order 1 Rule 10, the learned court allowed such application on the principles of Order 22 Rule 10 of the Code on the prayer of the opposite No.1, upon discussing the purpose of such substitution.

The learned court recorded that the entire suit premises was sold to the opposite party no.1 by a deed of conveyance on December 17, 2014. The opposite party no.1 became the sole owner in respect of the property in question. The opposite party no.1 had the right to step into the shoes of the plaintiffs and contest the suit. The transferee pendente lite had a right to be substituted, otherwise the interest of the transferee would be hampered and the real dispute could not be properly adjudicated. The court recorded that the evidence of P.W.1 was completed.

The substituted plaintiff is liable to accept the plaint case and the evidence on record of P.W.1.

The application was allowed upon payment of costs. The costs were paid to the defendants. Although, it is submitted that the defendant subsequently wanted to refund the said amount, such refund was refused by the opposite no.1. Thereafter, an application for amendment of the plaint was filed by the opposite party No.1, on the basis of the order of substitution. Such amendment was found to be formal in nature and was allowed on July 29, 2022.

The petitioner has challenged the orders only on the ground that the original plaintiffs should not be substituted. The opposite party No.1 could only be added as a party. This contention is not based on any cogent legal principle, apart from the fact that evidence of P.W.2 was not complete. The evidence of P.W.1 was closed and the same is already on record. Apart from Mr. Jhajharia, who is the director of the substituted plaintiff, no other person deposed as P.W.2, as per the records. Neither any examination-in-chief nor any cross-examination has been brought on record by the petitioner, in respect of any other person who deposed as P.W.2.

The present director of the plaintiff company had deposed as P.W.2. The deposition of the defendant is still pending. The defendant is entitled to tender all documents in support of the claim that money was paid to Supratik Ghosh even after the company purchased the suit property as per law and that the defendant was claiming to be a thika tenant.

Unfinished cross-examination of P.W.2 would cause prejudice to the defendant is the main objection of the petitioner.

Thus, if the court finds that apart from Supratik, Vishal and Sarbajit, any other person had deposed as P.W., such evidence shall be expunged from the records. In the examination-in-chief, Vishal

Jhajharia, P.W.2 had stated that the suit had been filed by Rupa Ghosh and Supratick Ghosh and Supratik Ghosh had deposed as P.W.1.

In the cross-examination of Vishal, the petitioner put questions with regard to acceptance of rent and Vishal answered as follows:-

“We have no knowledge to whom the defendant paid the rent in respect of the suit property during the period from 2014 till filing of the party add application.”

Vishal was also cross-examined on the point of thika tenancy and Vishal deposed as “I am advised by our Lawyer that the defendant is not a thika tenant in respect of the suit property.”

At the suggestion of the defendant, Vishal deposed “not a fact that the defendant is a thika tenant in respect of the suit premises.”

Thus, the questions of thika tenancy, payment of rent, searching of the property before the company/opposite party no.1 purchased the property, were all put to Vishal by the defendant/petitioner at the cross-examination. Question with regard to attornment of the tenancy was also put to Vishal and Vishal answered the same.

The apprehension of the petitioner that the issue of thika tenancy and the contentions with

regard to payment of rent would not go in evidence, is incorrect.

With the above observations, the revisional application is disposed of. The orders impugned do not suffer from material irregularity.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)