

SUPREME COURT OF INDIA

Jayanti Roy

Vs.

Dass Estates Pvt. Ltd.

C.A.No.3189 of 2002

(D.P. Mohapatra and D.M. Dharmadhikari JJ.)

30.4.2002

JUDGMENT

D.M. Dharmadhikari, J.

1. Leave to appeal is granted.
2. The parties represented in the case are finally heard on merits of the appeal.
3. In the suit filed for eviction of the appellant from suit premises under the provisions of Section 17(2) & (2A) of the *West Bengal Premises Tenancy Act, 1956* [hereinafter referred to as Act], the application for amendment has been rejected by the trial court and the order has been upheld by the High Court of Calcutta in revision under Section 115 of the Code of Civil Procedure. The appellant seeks to resist the eviction suit on the ground that there exists no relationship of landlord and tenant between the parties. In the application filed under Section 17(2) & (2A) of the Act initially in paragraph 10, it was stated that Almohan Dass was the licensee of the suit premises.
4. By the amendment application, permission was sought to delete original paragraph 10 to be substituted by new paragraph 10 to make an averment that Alamohan Dass was merely recorded 'permissive occupier' of Dag No. 150 and he was not in actual possession of Dag No. 148 and was never recorded as 'permissive owner' in record of rights in respect of that suit property. It was then sought to be pleaded that Alamohan Dass in 1965 had orally surrendered his licence in respect of Dag No. 150 in favour of licensor on a condition that the answering defendant, her husband and her son would be given a fresh licence for earmarked portion of Dag No. 150.
5. The trial court by the impugned order dated 10.4.2001 rejected the application for proposing the above amendment on the ground that an attempt is being made to withdraw the admission made in the original application regarding status of Alamohan Dass as the licensee of the suit premises.

6. The order of the trial court was maintained by the High Court in revision on additional ground that in proceeding under Section 17(2) & (2A) of the Act, complicated questions relating to title in respect of suit property are wholly irrelevant.

7. We have heard learned counsel appearing for the appellant and the authorised Director of the respondent company. It may be stated at the outset that similar amendment sought in proceeding of eviction between the same parties in relation to the adjacent plot, has been allowed by this Court by decision reported in 2001(8) SCC 97 [to which one of us Hon'ble Mr. Justice D.P. Mohapatra was a party].

8. It is settled that amendments to pleadings which are moved at the proper stage and not unduly delayed should not normally be refused. In the application raising dispute on payment of rent under Section 17(2) & (2A) of the Act the appellant has right from the beginning denied relationship of landlord and tenant between the parties. An amendment was moved stating that on discovery of additional evidence and material, Alamohan Dass was merely a "permissive occupier" in respect of one of the Dags. The appellant also sought leave to explain the nature of her possession and occupation. There does not appear any material inconsistency between the original averments in the application and those proposed by amendment.

9. Since this Court allowed similar amendment in suit between the same parties concerning adjoining plot, we find no justification to make a departure and take a different view. For the reasons aforesaid, the impugned order dated 10.4.2001 of the trial court and dated 29.8.2001 of the High Court both are set aside. The application for amendment filed by the defendant under Order 6 Rule 17 of the Civil Procedure Code is allowed. It would be open to the respondents to propose consequential amendments to its plaint and replies to application under Section 17(2) & (2A) of the Act which shall be considered by the trial court in accordance with law and the trial shall proceed. The appeal stands allowed with the above directions.

10. In these circumstances, we make no order as to costs.

Appeal allowed.