

ASSAM SCHEDULE VII, FORM NO. 143

HIGH COURT FORM NO. (J) 13

FORM OF ORDER SHEET District: Sonitpur

Court of Munsiff No. 2, Tezpur, Sonitpur

Present: Uttam Chetri

Misc (J) Case No. 31/15 in Title Suit No. 77/13

ITP Ltd vs Government of Assam and Ors.

Sl. No of orders	Date	Order or other proceedings	Signature
	25.05.15	<p>Both sides are represented.</p> <p>Heard learned counsel for both sides.</p> <p>The instant Misc (J) Case arose out of petition bearing no. 224/15 dated 24.02.15 filed by the plaintiff/petitioner praying for amending its plaint (Title Suit No. 77/2013) under Order VI Rule 17 read with Section 151 of the Civil Procedure Code.</p> <p>The petitioner pleads that it being the owner of the suit land instituted Title Suit No. 77/2013 claiming the relief of permanent injunction prohibiting the defendants from encroaching/entering the suit land; that during the course of cross examination, it was revealed that defendant no. 3, Sri Sanju Orang for self and for defendant no 1 and 2 is wrongfully possessing the suit land by utterly invading the right, title and interest of the plaintiff over the suit land; that, therefore, it has become necessary to seek further relief of declaration of plaintiff's right, title and interest over the suit land with consequential relief of eviction of the defendant no. 3 there-from by demolishing the illegal and unauthorised structures erected by the defendant no. 3 thereon by way of amendment of the plaint. The amendment sought for the plaintiff are as follows:</p> <p>a) In the cause title of the plaint before the word permanent injunction the following sentence namely 'declaration of plaintiff's right, title and interest over the suit land with consequential relief of eviction of the defendants there-from by demolishing the illegal and unauthorised structures erected by the defendant no. 3' should be inserted.</p>	

b) In paragraph 18 of the plaint, the following sentence namely **'further valuation of the suit for the above relief of declaration of consequential relief of eviction u/s 7(4) © of the Specific Relief Act at Rs 100 allowing the plaintiff to pay requisite additional court fee of Rs 11.00 thereon'** should be inserted.

c) After paragraph 9 in the plaint 'a new paragraph 9A with the following words **'that in course of trial of the suit it is revealed that the defendants through the defendant no. 3 in particular has had illegally invaded into the lawful right, title and interest of the plaintiff over the suit land for which it is necessary to declare the right, title and interest of the plaintiff over the suit land with consequential relief of eviction of the defendant particularly the defendant no 2 and 3 by demolishing the illegal and unauthorised structures erected by the defendant no. 3 therefrom'** should be inserted.

d) That a new paragraph **'the suit be decreed for declaration of plaintiff's right, title and interest over the suit land with consequential relief of eviction of the defendants by demolishing the illegal and unauthorised structures erected by the defendant no. 3 there-from'** should be inserted and to allow them to number the existing reliefs under clause (i), (ii) and (iii) as (ii), (iii) and (iv) in the prayer paragraph of the plaint.

The petitioner submits that the above amendments are necessary for the purpose of determining the real question in controversy between the parties in respect of the suit; that the proposed amendment would not change the nature, character or subject matter of the suit and that the petitioner has filed this application by exercising due diligence after cross examination of plaintiff was over.

The opposite party no. 1 has opposed the aforesaid amendment by filing his written objection, wherein among other things, it states that the petitioner has wrongly stated in paragraph 3 of the aforesaid petition **'that during the course of cross examination, it was**

revealed that defendant no. 3, Sri Sanju Orang for self and for defendant no 1 and 2 is wrongfully possessing the suit land by utterly invading the right, title and interest of the plaintiff over the suit land' because in the plaint itself it has been stated that the defendant no. 3 is wrongfully possessing the suit land which has been corroborated by PW1 who in his cross examination has stated that defendant no. 3 has been occupying the suit land from about 15 days prior to the filing of the suit. As such, the plaintiff already had the knowledge regarding the possession of the suit land by defendant no. 3 during the filing of the suit, and in spite of that, it sought a direction from this court for prohibiting and restraining the defendant no. 3 from encroaching the suit land who was already in possession of the suit land. Therefore, the petitioner has filed this amendment petition only to fill up the lacuna in its plaint, and if the amendment petition is allowed, it will change the nature and character of the suit. The opposite party no. 1, therefore, prays for dismissing the petition with costs.

Perused the petition and written objection. Heard both sides.

Order VI Rule 17 of the Civil Procedure Code provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Thus before the commencement of trial either party to the suit may at any time amend his pleading which may be necessary for the purpose of determining the real questions in controversy between the parties. But after the commencement of trial, a party apart from showing that the amendment is necessary for the purpose of determining the real questions in controversy between the parties is also required to show that in spite of due diligence he could not raise the matter before the

commencement of trial i.e., he has to show the circumstances which prevented him from amendment of his pleading before the commencement of the trial.

In Title Suit No 77/13, the petitioner/plaintiff prayed for granting prohibitory injunction restraining the defendant no. 3 from encroaching the suit land, although in the body of the plaint it has clearly pleaded that the defendant no. 3 has encroached the suit land. When this lacuna was pointed out by the learned counsel for the defendant no. 1 during the course of argument and the suit was fixed for judgment, the plaintiff filed this petition under Order VI Rule 17 read with Section 151 of the Civil Procedure Code for including the prayer of declaration of right, title and interest of the plaintiff over the suit land and for eviction of defendant no. 3 from the suit land stating that during the course of cross examination of the plaintiff's witness, it was revealed to it that defendant no. 3, Sanju Orang has been in possession of the suit land, as such, the prayer for declaration and eviction could not be included by them during the filing of the suit.

Thus it is seen that plaintiff in spite of the knowledge of the fact that, defendant no.3 is in possession of the suit land wrongly drafted the prayer portion of the plaint for granting prohibitory injunction against the person who was already in the suit land. Further neither any prayer for declaration of right, title and interest of the plaintiff in respect of the suit land nor any prayer for eviction of the defendant no. 3 was sought for in the plaint. It was only after the learned counsel for the defendant no. 1 pointed out the aforesaid lacuna during the course of argument, the defendant filed this instant petition for amendment of the plaint and for adding the prayer of declaration and eviction. Moreover, the plaintiff could not show the circumstances which prevented him from amendment of his pleading before the commencement of the trial or that in spite of due diligence, why it could not raise the matter before the commencement of trial.

As such, I am of the considered view that the plaintiff's petition for amendment falls under the bar imposed by the proviso to Order VI Rule 17 of the Civil Procedure Code. Further Section 151 of the Civil Procedure Code cannot be of any help to the plaintiff because powers under Section 151 are in addition to the powers specifically and

expressly conferred on the Code by the Court. They are thus complementary, and the court can exercise them when exercise thereof is not in conflict with express provision in the Code, or against the intention of the legislature. They cannot, however, be exercised in conflict with express provision of law.

The petition is, therefore, rejected.

The petition is disposed of accordingly.

Accordingly the Misc Case is disposed of on contest.

Parties are directed to bear their own cost.



**MUNSIFF No.- 2
TEZPUR**

