

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Hiranmay Bhattacharyya**

C. O. 1381 of 2018

**M/s. Navnirman Infracon Private Limited
-Versus-
Gurbinder Singh & Ors.**

For the Petitioner : Mr. Arif Ali

**For the Opposite Party Nos. 1 to 6 : Mr. Gopal Pahari
Ms. Mandeep Kaur.**

Heard & Judgment On : December 21, 2020

The defendant no.1 has filed the instant application under Article 227 of the Constitution of India challenging the order dated March 22, 2018 passed by the learned Civil Judge (Senior Division), 8th Court at Alipore in Title Suit No.1183 of 2017. The opposite party nos. 1 to 6 herein have filed the instant suit for declaration of their right as thika tenants in respect of the suit property and for perpetual injunction.

By the order impugned the application under Order VII Rule 11 of the Code of Civil Procedure filed by the petitioner herein was rejected.

Being dissatisfied, the defendant no.1 has filed the instant civil revisional application.

Mr. Arif Ali, learned advocate appearing for the petitioner contends that the plaintiffs have prayed for declaration of their right in respect of the suit property as thika tenants. He contends that the Civil Court's jurisdiction to decide as to whether the plaintiffs are thika tenants in respect of the suit property is barred under Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (for short "the said Act"). He contends that the learned Judge of the court below acted illegally and with material irregularity by rejecting the application filed by the petitioner herein for rejection of plaint.

Mr. Gopal Pahari, learned advocate appearing for the plaintiff/opposite party nos. 1 to 6 seriously disputes the contentions of the learned advocate for the petitioner. He contends that the plaintiffs have already been declared as thika tenants by an order dated January 27, 1994 passed by the Controller, Calcutta Thika Tenancy. According to him, the title of the plaintiffs have been clouded as a result of an order passed by this Court in W.P. 16662(W) of 2017 for which the instant suit has been filed. He contends that the vendors of the defendant no.1 did not have any manner of right, title and interest to convey any title in favour of the defendant no.1 and the plaintiffs have filed the instant suit for declaration that the purported indentures executed in favour of the defendant no.1 by his vendors are void and had no effect. He further

submits that the Controller does not have any jurisdiction to declare the deeds executed in favour of the defendant no.1 as void and the Civil Court only has jurisdiction to make a declaration to that effect.

I have heard the learned advocates for the parties and have perused the materials on record.

It has been specifically pleaded in the plaint that the plaintiffs and the defendant nos. 12 and 13 always had and still have the right, title and interest in respect of the suit property as thika tenants. It was further pleaded that the right to sue has accrued only when this Hon'ble Court by an order dated June 20, 2017 passed in W.P. 16662(W) of 2017 was pleased to hold that there appears to be a serious dispute over the status of the plaintiffs as thika tenants in respect of the suit premises. On the basis of such averments the plaintiffs have prayed for the following amongst other reliefs.

“(b) A decree for declaration that plaintiffs and defendants Nos. 12 and 13 have acquired right, title and interest in respect of the said property which particularly described in the Schedule-A hereof as Thika Tenants;”

Sub-section 3 of Section 5 of the said Act provides that if any question arises as to whether a person is a thika tenant or not or whether the land in question is thika land or not, the Controller, either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after

examining all such documents and particulars as may be considered necessary, enquire upon and decide such question. Thus Section 5 (3) of the said Act empowers the Controller to decide any question as to whether a person is a thika tenant or not.

In the instant case, the plaintiffs are claiming to be the thika tenants and have prayed for declaration of their right as thika tenants in respect of the suit property since their title have been clouded pursuant to an order passed in a writ proceeding by this Hon'ble Court. Thus only the Controller has the authority to decide such question in terms of Section 5 (3) of the said Act.

Section 21 of the said Act provides that no civil court shall have jurisdiction to decide, or to deal with, any question, or to determine any matter, which, by or under this Act, is required to be, or has been, decided or dealt with, or which is to be, or has been, determined, by the Controller or the appellate or other authority specified in the provisions of this Act.

A Court has jurisdiction to try all suits of civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. Section 21 of the said Act expressly bars the jurisdiction of the civil courts in respect of any question or matters which are required to be dealt with or decided by the Controller.

Since the plaintiffs have prayed for a declaration that they are the thika tenants in respect of the suit property and such question is to be

decided by the Controller under Section 5 (3) of the said Act, the Civil Court's jurisdiction to decide such question is barred under Section 21 of the said Act.

After reading the plaint as a whole, I am of the view that the instant suit is barred under Section 21 of the said Act. Where a suit appears from the statement in the plaint to be barred by law, it is obligatory upon the court to reject the plaint as a whole. Under Order VII Rule 11 of the Code of Civil Procedure, the court cannot dissect the pleading into several parts. It is well settled that there cannot be a partial rejection of plaint. As such there is no merit in the submission of the Learned Advocate for the petitioner that the plaint cannot be rejected as only the civil court and not the Controller has the jurisdiction to declare the deeds executed in favour of the defendant no.1 by its vendors as void.

The learned Trial Judge while rejecting the application under Order VII Rule 11 of the Code was swayed by the fact that the plaintiffs' status as thika tenants has already been declared by the Controller by an order dated January 27, 1994 by totally overlooking the averments in the plaint that the right, title and interest of the plaintiffs have been clouded by an order passed by this Hon'ble Court in a writ proceeding which compelled the plaintiffs to sue for declaration of their status.

The impugned order suffers from infirmity and the same is accordingly set aside. The application under Order VII Rule 11 of the

Code of Civil Procedure filed by the defendant no.1/petitioner herein stands allowed. Consequently the plaint of Title Suit No. 1183 of 2017 is rejected.

C.O. 1381 of 2018 is allowed without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Hiranmay Bhattacharyya, J.)