

18.12.2020

C.O. 3355 of 2018

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Mohan S.Jethwani

-vs-

Harish Kumar Prasad

Mr. Arghya Kamal Das...for the petitioner.

Mr. Arnab Mukherjee

Ms. Arpita Saha

.....for the opposite party.

The defendant in a suit for eviction and recovery of possession has filed the instant application under Article 227 of the Constitution of India challenging the order No. 32 dated March 13,2018 passed by the learned Civil Judge (Senior Division), Darjeeling in OC Suit No. 26 of 2016 (Registration No. 52/2016).

By the order impugned the petitioner's application under Order 7, Rule 11(d) of the Code of Civil Procedure was rejected.

The learned Advocate appearing on behalf of the petitioner submits that the learned Trial Judge mechanically rejected the application for

rejection of plaint without assigning reasons therefor.

The learned Advocate for the opposite party submits that the cause of action OC (Title) Suit No. 10 of 2009 and OC Suit No. 26 of 2016 is entirely different.

According to him though the parties to the said suit are same but the issues involved in both the suits are not common.

Heard the learned Advocate appearing for the respective parties and considered the materials on record.

The earlier suit being Suit No. 10 of 2009 is a suit for permanent injunction. The instant suit being (Title) Suit No. OC 26 of 2016 is a suit for eviction and recovery of possession. The issues involved in a suit for injunction are not directly and substantially similar to that of the eviction suit.

A plaint can be rejected under Order 7 Rule 11 of the Code where the suit appears from the statement in the plaint to be barred

by law. The question as to whether the instant suit for eviction is barred by res-judicata can be decided only after the pleadings of the respective parties and the judgment passed in the suit for injunction are brought on record by the parties by leading evidence and marked as exhibits in the suit for eviction. Upon a bare reading of the plaint it does not appear that the instant suit is barred by res-judicata. Thus, the plaint of the instant suit cannot be rejected under Order 7 Rule 11 of the Code.

The order impugned does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

C.O. No. 3355 of 2018 is dismissed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Hiranmay Bhattacharyya,J)

