

24-01-2020
Court No.3
(Susanta)
SI/18.

**CIRCUIT BENCH OF
CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 98 OF 2019

**Biswajit Bhowmick & Anr.
Vs.
Smt. Pabitry Devi Patodia & Ors**

Mr. Sunil Kumar Sarkar

. . .For the Petitioners.

The revisional application Under Article 227 of the Constitution of India is at the instance of the defendant in a suit for recovery of possession and is directed against order no. 11 dated November 19, 2019 passed by the 1st Court of Learned Civil Judge (Junior Division) at Jalpaiguri being Title Suit no. 186 of 2018.

The plaintiffs/opposite parties have filed the connected suit for recovery of possession of the suit property describing the petitioners as rank trespassers therein.

The petitioners filed an application under Section 11 of the West Bengal Court Fees Act, 1970 for determination of the correct valuation of the subject matter of the suit.

In the said application, the petitioners have contended, inter alia, that the suit has wrongly been valued at Rs. 250, as such, an investigation under Section 11 of the Court Fees Act, 1970 is required for the purpose of determination of the correct valuation of the said suit.

The learned Trial judge by the order impugned has dismissed the said application holding that the plaintiff has sought for recovery of possession from rank trespassers without any declaration of title over the suit property, as such, have correctly evaluated the suit.

Mr. Sarkar, learned advocate appearing on behalf of the petitioners, relying on the Division Bench Judgment of the Principal Bench in the case of ***Naba Kumar Biswas Vs. Biswarani Biswas reported in 2016 (162)AIC 645*** submits that the value of the suit property is not less than Rs. 85,0000/- (Rupees eighty five lakh), therefore, the plaintiffs to maintain the suit is required to pay Court Fees on the market value of the suit property.

He further submits that the defendants when filed an application under Section 11 of the West Bengal Court Fees Act, 1970, the learned Trial Judge is required to make an inquiry according to Section 12 thereof, having not doing so the dismissal of the said application is not justified.

Having heard Mr. Sarkar and on perusal of the materials on record it appears that the plaintiffs at paragraph 22 have valued the suit for the purpose of relief and jurisdiction in the following manner:-

"That as the suit is for Recovery of Possession from rank trespassers who is illegally occupying the suit plot of land described in Schedule below. The suit is valued at Rs.250/- for the purpose of determination of jurisdiction of this Ld. Court and for payment of Court Fees as per Section

7(vi), of West Bengal Court Fees Act as amended upto date. Court fees is paid accordingly”.

In terms of the provision of Section 7(Vi) (a) of the aforementioned Act in a suit for recovery of possession of immovable property from a trespasser where no declaration of title to property is either prayed for or necessary for disposal of the suit according to the amount at which the relief sought for is valued in the plaint subject to the provision of Section 11.

The plaintiffs in the suit is praying recovery of possession of the suit property from rank trespassers.

The inquiry contemplated under Section 11 of the said Act is subject to the Court forming an opinion that the subject matter of the suit has wrongly been valued.

The learned Trial Judge in the order impugned has formed an opinion that the market value as stated by the defendant is indeed speculative and there is nothing on record to affirm the veracity of the same in any manner. The opinion so formed does not appear to be perverse.

The decision relied on by Mr. Srarkar in the case reported in 2016 (162)AIC 645 (supra) is distinguishable in the facts of the present case inasmuch as in the said case the plaintiff although sought for declaration of title over the suit property and prayed recovery of possession of the same but did not value the relief as per the market value of the suit property. In the present case as already has been discussed above no relief of declaration has been prayed for.

That being the position this Court does not find any illegality and/or infirmity in the order impugned warranting interference.

However, the issue regarding valuation of the suit property can be re-visited at the time of final disposal of the suit upon sufficient material being produced by the defendant by framing an appropriate issue thereof.

With the above C.O. 98 of 2019 is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)