

9th August,
2021
(AK)
5

**C.O. 7 of 2019
IA No: CAN 1 of 2019
(Old No: CAN 9785 of 2019)**

**Sri Dilip Talikder
Vs.
Harilal Majumder, since deceased
represented by his legal heirs Smt.
Pakhirani Majumder and others**

(Via video conference)

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
... For the Petitioner.

Mr. Arijit Bardhan
...For the Opposite party.

Learned counsel appearing for the petitioner, who was the defendant in a suit for declaration that a deed dated November 7, 2008 is illegal, void and not binding upon the plaintiffs and for ancillary reliefs, submits that the trial court refused to exercise jurisdiction vested in it by law in rejecting the petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, for rejection of the plaint.

Learned counsel contends that the suit was palpably barred by Section 34 of the Specific Relief Act, since the plaintiff no.2, even as per the pleadings of paragraph nos.5 and 8 of the plaint, had executed the deeds but subsequently alleged forgery and misrepresentation, the appropriate relief to be sought by

the second plaintiff would be a cancellation of such deed, since the said plaintiff was himself an executant of the same.

Hence, it is contended that the trial court ought to have rejected the plaint at the outset, the suit being barred by law.

In support of his contention, learned counsel places reliance on the judgments reported at *AIR 2020 SC 4047* and *AIR 2010 SC 2807*, to iterate the proposition that the executant of a deed, if challenging the same in a suit, has to seek cancellation of the same. A mere prayer for declaration that the deed is 'not binding' on him would not suffice.

Learned counsel places the relevant paragraphs in the first-cited judgment to elaborate the nitty-gritties of judgments *in rem* and judgments *in personam* in such context.

Learned counsel appearing for the plaintiffs/opposite parties argues that the arguments made in this court are beyond the grounds taken in the application under Order VII Rule 11 of the Code of Civil Procedure and/or canvassed in the trial court.

That apart, as far as the contention regarding non-maintainability of the suit is concerned, even going by the arguments of the defendants, the suit is maintainable in respect of the first plaintiff.

Since it is well-settled that there cannot be any partial rejection of plaint, the entire application under Order VII Rule 11 of the Code of Civil Procedure was rightly turned down by the trial court.

That apart, it is argued that the plaintiff no.2 denies having consciously executed the deed and, as such, the suit is maintainable with regard to the second plaintiff as well, since a declaration that the deed was void and not binding was the appropriate relief to be sought.

Learned counsel for the plaintiffs/opposite parties, in reply, candidly admits that, in the court below, stress was given on the question of the suit being barred by limitation, which the plaintiffs do not press, as such, before this court.

However, in view of the other question raised, regarding the bar of Section 34 of Specific Relief Act, 1963, the same being a pure question of law, can be urged and decided for the first time before the revisional court as well.

Upon going through the contents of the plaint, it is clear that, as rightly submitted by learned counsel for the plaintiffs/opposite parties, even as per the arguments of the defendants, the suit is maintainable in so far as the first plaintiff is concerned, since the first plaintiff also claims to be a co-owner of the suit property and never executed the deed at all.

Therefore, the appropriate relief for the first plaintiff would be relief (a) sought in the plaint, seeking a declaration that the deed is illegal, void and not binding upon him. Partial rejection of plaints being deprecated by settled judicial opinion, the entire application under Order VII Rule 11 was, thus, rightly rejected.

Even inasmuch as the second plaintiff is concerned, it is arguable as to whether the suit is barred by the provisions of the Specific Relief Act, since it is open to argument as to whether, even as per the plaint pleadings, the second plaintiff at all executed such document or not.

Be that as it may, apart from the fact that it is well-settled that there cannot be any partial rejection of plaint, the issues raised in the present revisional application have to be decided on merits upon taking evidence, which can only be done by the court below at the trial of the suit.

Hence, there is no merit in the present revisional application. The trial court was justified in passing the impugned order, rejecting the demurrer application of the petitioner.

Accordingly, C.O. 7 of 2019 is dismissed, affirming the order impugned therein, without any order as to costs.

However, it will be open to the trial court to decide all issues raised by the parties in the suit on their own

merits at the final hearing of the suit, without being prejudiced in any manner by any of the observations made herein.

CAN 1 of 2019 (Old CAN 9785 of 2019) is also dismissed accordingly.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)