

S/L 7
13.01.2021
Court. No. 19
sn

C.O. 131 of 2020

Alpana Panja & Ors.
Vs.
Sri Feluram @ Feludhan Hazra & Ors.

Mr. Tapas Kumar Dey
Mr. Ashis Kumar Dutta
Mr. Nirupam Sarkar
Mr. Rakesh Roy

...for the Petitioners.

This revisional application has been filed by the defendants in Title Suit No.55 of 2016, pending before the learned Civil Judge, 2nd Court, Howrah.

According to the petitioners, the learned Court below ought not to have rejected the application under Order 7 Rule 11 of the Code of Civil Procedure filed by the petitioners for rejection of the plaint on the ground that the plaint did not disclose any cause of action. From the averments made in the application under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendants, it appears that the defendants had stated that the suit was filed on an illusory cause of action and a third party to a deed did not have the locus standi to challenge the deed unless, the third party was affected by the deed.

It was further averred that the suit was barred by law and otherwise mis-conceived as also frivolous, which

resulted in miscarriage of justice and was an unnecessary wastage of valuable judicial hour.

The above are the grounds on which the application was filed for rejection of the plaint. Under the Code of Civil Procedure, grounds for rejection of a plaint is provided in Order 7 Rule 11. For convenience, the said is quoted below :

“11. Rejection of plaint – The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;**
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so;**
- (c) where the relief claimed is property valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisites stamp-paper within a time to be fixed by the Court, fails to do so;**
- (d) where the suit appears from the statement in the plaint to be barred by any law;**
- (e) where it is not filed in duplicate;**
- (f) where the plaintiff fails to comply with the provisions of Rule 9.”**

From the reading of the plaint, I find that this a suit for partition and the plaintiff no.1 claimed one half share in the suit property by inheritance and the other plaintiff nos. 2,3 and 4 claimed one sixth share each on the basis of the deed of gift dated November 9, 2012. The relevant paragraphs are stated below:- :

“Be that as it may, it be submitted that after 1/3(one third) share by Krishna Chandra alias Krishna Pada in favour of the said Smt.Tanushree and Smt. Chhanda Banerjee as said above, his mother i.e.the widow of Late Kunjabehari Hazra viz. Smt. Khanda Bala Hazra (Dasi) died and as such the said undivided 1/3 (one third) share of Smt. Khanda Bala Hazra (Dassi) equally devolved upon his two sons viz. Krishna Chandra alias Krishna pada

Hazra, the deceased father of the defendant nos. 1 to 3 and also in favour of Phelu Dhan alias Phelu Ram Hazra i.e. the plaintiff Nos. 1.

That in view of the above facts and circumstances the share of the pheluram comes $\frac{1}{3}$ (one third) by inheritance from his father Kunjabehari and the $\frac{1}{6}$ (one sixth) share from his mother Khanda Bala now his total share become $(\frac{1}{3} + \frac{1}{6} = \frac{1}{2})$ i.e. $\frac{1}{2}$ (half) of the total property.

It is submitted that said Phelu Ram Hazra by a registered Deed of Gift dated 09/11/12 transferred his $\frac{1}{2}$ (one half) share in the said property in favour of his three sons viz. Prodip, Sukumar and Jayanta i.e. the above-named plaintiff Nos. 2, 3 and 4 vide deed of gift No. 09536 execution dated 09.11.12 and registration date 12/11/12. The plaintiff No. 2, 3 & 4 being the donees to the said deed of gift by the plaintiff No. 1 duly accepted the same.

That in view of the above the share of the plaintiff No. 1 Pheluramm comes to $\frac{1}{2}$ by way of inheritance and the shares of plaintiff No. 2 to 4 comes to jointly $\frac{1}{2}$ i.e. $\frac{1}{6}$ each by the said deed of Gift dated 9/11/12 made by the plaintiff No. 1 and the share of the defendant No. 1 to 3 comes $\frac{1}{6}$ th share each on death of Khanda Bala Hazra Dasi the rightful title and interest of the proforma defendant No. 4 by virtue of the lease deed dated 10/06/14 is uncertain and doubt full honour the same may be defendant upon the adjudication of the Ld. Court.

It is submitted that on account of the said disputed deed of lease dated 10/06/14 as well as due to family disturbances with the defendant Nos. 1 to 3 in the matter of joint possession, the plaintiff having been facing a lot of inconveniences on 27/01/16 requested the defendant No. 1 to 3 to make partition of the suit property by metes and bounds as per the legitimate shares of the parties, but it is unfortunate to state that being provoked by the defendant No. 4, the said defendants refused to make partition of the suit property hence the plaintiffs finding no other alternative seek a comprehensive relief from the Ld. Court by way of a decree for partition as written herein below."

The plaintiffs have prayed for a decree for declaration that the deed of lease executed in favour of the defendant no.4, allegedly a tenant, was illegal, invalid and void and also for a preliminary decree declaring that the plaintiff no.1 had one half share in the suit property and the plaintiff nos. 2 to

4 had one sixth share each in the suit property. Final decree was also prayed for upon effecting partition by metes and bounds.

Thus, the plaint read as a whole discloses a cause of action. The correctness, legality and also the merits of such averments and the claim for partition are matters to be decided on trial, upon evidence. The pleadings disclose cause of actions against the defendants and as such the plaint cannot be rejected by applying the provisions of Order 7 Rule 11 (a) of the Code of Civil Procedure. Coming to the other point for rejection of the suit being barred by law, I find that the averments in the application under Order 7 Rule 11, I do not mention as to why the suit would be barred by law in the assessment of the defendants. Whether the suit is frivolous, misconceived or the mala fide will also be decided upon trial.

The contention of the petitioners that in the absence of any pleadings with regard to when the cause of action arose, the plaint was liable to be rejected, cannot be accepted by this Court, inasmuch as, the plaint can only be rejected on the ground stated in Order 7 Rule 11 of the Code of Civil Procedure. Moreover, the points as to whether the partition suit was maintainable has already been decided by the appropriate Civil Court at the instance of the defendants, who had filed an application under Order 14 Rule 2 of the Code of Civil Procedure.

By an order dated August 16, 2018, the Court decided that the partition suit was maintainable before the Civil

Court and not before the Thika Controller and the learned Court was satisfied that the records did not reveal that the property was a thika property. Although, this was not the ground urged in the application under Order 7 Rule 11 but the learned Court below considered the arguments of the learned Counsel for the defendants and arrived at the above findings. The said order dated August 16, 2018 was not challenged by the defendants before any higher forum. Thus, this issue has been finally decided. It is a settled law that the principle of res judicata applies in every stage of a proceeding.

Under such circumstances, I do not find any reason to interfere with the order impugned and the revisional application is thus dismissed.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)