

04.02.2021
Sl. No. 10
srm

C.O. No. 217 of 2021

Himalaya Vintrade Private Limited

Vs.

Md. Zahid & Anr.

Mr. Kishore Dutta, Advocate General

Ms. Sumita Shaw,

Ms. Shivangi Thard

...for the Petitioner.

Mr. Amal Kanti Das,

Mr. Imran Qarim,

Mr. Debayan Sinha,

Ms. Anyasha Das

...for the Opposite Parties.

This revisional application has been filed against the order dated January 8, 2021 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Title Suit No.150 of 2019. By the order impugned, the learned Court below rejected an application under Order VII Rule 11 of the Code of Civil Procedure filed by the defendants. The revisional application is at the instance of the defendant No.2.

By the order impugned, the learned Court below upon reading the plaint as a whole came to the conclusion that the maintainability of the suit could not be determined at this stage, inasmuch as, the parties were required to adduce their written and oral evidence in support of the respective contentions and claim over the suit property.

The facts are that the plaintiff was engaged as a caretaker/servant to look after and manage the suit property. The owners of the suit property expired. The plaintiff continued to be in possession and had custody over the suit property. Suddenly, the defendants with some other anti-socials elements trespassed into the suit property and started disturbing the possession of the plaintiff in the suit property. Thus, the suit was filed with the following prayers:

“a) for a declaration that the plaintiff is a lawful occupier as caretaker/servant of the sole owner of the A schedule property and occupier and adverse possessor of the B Schedule property.

b) for the permanent injunction restraining defendant to disturb or evict the peaceful possession of the plaintiff otherwise then due course of law.

c) for an ad interim order of injunction restraining the defendants to the above effect.

d) for all cost of the sue.

e) for any other relief or reliefs the plaintiff is entitled to get by law and equity.”

Mr. Dutta, learned Advocate General appearing on behalf of the defendant No.2/petitioner, submits that the plaintiff did not disclose any cause of action. That the suit was barred by law, inasmuch as, a caretaker did not have any right, title, interest over the property. That no declaration of title or ownership could be made in favour of the caretaker. Thus, according to Mr. Dutta, the plaint should be rejected before trial.

Mr. Das, learned Advocate appearing on behalf of the plaintiff/opposite parties, submits that whether the suit is maintainable or not is an issue to be tried as one of the first issues and the contention of Mr. Dutta at this stage cannot be accepted. Maintainability of the suit will depend on evidence led by both the parties.

Having gone through the plaint as a whole, it appears that the plaintiff as a caretaker filed the suit for declaration that he is the caretaker of the A schedule property and an occupier being in adverse possession of the B schedule property. Next prayer is for permanent injunction restraining the defendants from disturbing the peaceful possession of the plaintiff and further restraining the defendant from evicting the plaintiff without due process of law. Ad interim injunction has also been prayed for. In the application under Order VII Rule 11 of the Code of Civil Procedure, the petitioner has not mentioned the basis of the claim of the petitioner in respect of the suit property. The defence of the petitioner is not on record and the written statement has not been filed and as such, at this stage, rejection of the plaint would not be proper. The plaint as a whole discloses that the plaintiff was put in possession of the suit property as a caretaker. The owners have died. The plaintiff continued to be in possession of the suit

property as a custodian and/or a caretaker and some rank outsiders with the help of anti social elements were disturbing the possession of the plaintiff for which, the plaintiff sought recourse to law by filing the suit. Whether the defendants are the owners of the property having purchased the said property from the erstwhile owners and the persons who put the plaintiff in possession as the caretaker, are issues to be decided on trial. The maintainability of the suit vis-à-vis prayer (a) of the plaint is also to be decided as one of the first issues upon trial on evidence.

I do not find any illegality or irregularity in the order impugned. The revisional application is, thus, dismissed.

The defendants are directed to file their written statement within three weeks from the date and the learned Court below is directed to expedite the hearing of the suit and dispose of the same within a period of six months from the date of communication of this order.

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.)