

11.11.2021
Item No.6
Ct. No. 18
AJ.

C.O. 292 of 2021

(Through Video Conference)

Sri Shyamal Kumar Sadhukhan & Anr.

-Vs-

Sri Ajay Sadhukhan

Mr. Arijit Bardhan,
Mr. Rishabh Dutta Gupta.
....for the petitioners.

None appears on behalf of the opposite party in spite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for eviction of trespasser and is directed against the order dated September 29, 2020 passed by the 2nd Court of the learned Civil Judge (Junior Division), Barasat, District- 24 Parganas (North) in the said suit being Title Suit No. 121 of 2018.

The suit is proceeding *ex parte* against the defendant and was posted for *ex parte* order on September 29, 2020. The learned Trial Judge, on the said date, called for a report from the Collector, 24-Parganas (North) regarding the correct valuation of the suit shop-room holding that the plaintiffs have valued the suit for eviction of trespasser at Rs. 100/- but the suit shop-room, being a commercial space at Gobordanga Bazar, the value of it cannot be Rs. 100/-.

Mr. Arijit Bardhan, learned advocate appearing on behalf of the petitioners submits that the plaintiffs have prayed for a decree of eviction of a trespasser without praying any further relief for declaration of their right, title and interest over the suit shop-room, as such, the plaintiffs, in terms of Section 7(vi)(a) of the West Bengal Court-fees Act, 1970, are entitled to value the relief sought for in the suit according to their own choice.

Mr. Bardhan in support of his said submission places reliance on the decision of the Division Bench of this Court in the case of ***Arobindo Saha –Vs- Nowser Ali Khan*** reported in **2015 SCC On Line Calcutta 8343**.

Heard Mr. Bardhan, perused the materials-on-record.

It appears that this is a suit for eviction of trespasser simplicitor without any relief for the declaration of right, title and interest over the suit shop-room being prayed therefore, the plaintiffs can maintain the suit on a value of their choice in terms of Section 7(vi)(a) of the said Act of 1970 as has been held by the Division Bench in the decision reported in **2015 SCC On Line Calcutta 8343 (supra)**. Paragraph 11 of the said decision being relevant is quoted below:-

“11. Thus if we apply this test in the present case, then we find that since the plaintiff has filed suit for recovery of possession from trespassers without

seeking any declaration of his title in the suit property and further since grant of such relief to the plaintiff is not dependent upon any declaration about his title in the suit property, he can maintain the suit by following the relief claimed in the suit as per his own choice. That be the position, we have no hesitation to hold that the suit has been properly valued and sufficient court fees has been paid by the plaintiff in the suit.”

The choice of the plaintiffs to value their relief in terms of Section 7(vi)(a), no doubt, is subject to the provision of Section 11 of the said Act of 1970 but the inquiry contemplated under the said provision of the said Act of 1970 cannot be construed to equate the value of the property or subject-matter with the value of the relief sought.

That being the position, there is no necessity of the report of the said Collector regarding the actual valuation of the suit shop-room.

The order impugned, for the aforesaid reasons, is set aside. The learned Trial Judge is requested to dispose of the suit as expeditiously as possible.

C.O. 292 of 2021 is disposed of without any order for 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.)