

16.03.2021
Court No. 19
Item No. 6
sn

C.O. 434 of 2021

Md. Shakil
vs.
J. B. Nausher Ali & ors.

Mr. Syed Nurul Arefin
Ms. Saswati Chatterjee
..for the petitioner
Sk. Md. Galib
..for the Board of wakf
Mr. Gour Baran Sau
..for the opposite party nos.1&2
Mr. T.M. Siddique
Mr. N. Chatterjee
..for the opposite party no.6
Mr. Nayaab Mulla
Mr. M.A. Samad
..for the proforma defendant no.10

This revisional application has been filed against an order dated January 12, 2021 passed by the Waqf Tribunal, West Bengal in Suit No. 28 of 2019.

By the order impugned, the learned tribunal rejected the application under Order 7 Rule 11 of the CPC filed by the defendant no. 1 and imposed cost of Rs.15000/-.

According to Mr. Arefin, leaned advocate appearing on behalf of the petitioner/ defendant no.1 in the suit, the learned tribunal ought not to have rejected the said application, inasmuch as, in paragraphs 6, 7 and 8 of the plaint the plaintiffs have categorically mentioned something about the thika

land and if the ongoing construction was connected to a thika land adjoining the suit property it was only the thika controller who has jurisdiction to decide the issue involved in the suit. It is next submitted that the suit was barred by law under Section 34 of the Specific Relief Act as there was no prayer for recovery of possession.

Mr. Galib, learned advocate appearing on behalf of the Board of Waqf, submits that at the stage of a decision on an application under Order 7 Rule 11 of the CPC, the tribunal only has to restrict itself to the averments made in the plaint.

Having gone through the order impugned, it appears that the learned tribunal did embark on all the issues and held almost a mini trial, which was not necessary in this case. However, it is very clear that the plaint discloses a cause of action triable by the Waqf Tribunal.

It also appears from the submissions in the plaint that no relief has been sought for with regard to any thika land. The contentions of the plaintiffs were that the defendant no. 1 has used a building sanction plan granted in respect of a thika land which was not the suit property, for construction on the suit property without obtaining a sanction plan for that property. Thus nowhere in the plaint, have I found any cause of action with regard to any thika

property. With regard to the contention of the petitioner that the suit was barred under Section 34 of the Specific Relief Act, it is a settled principle of law that a suit should not fail on account of failure to pray for recovery of possession and the plaint could always be amended. It is also to be kept in mind that the suit has been filed under the Waqf Act, 1995 which is a special statute and whether the general law specified under the Specific Relief Act would govern the suit is also a matter to be decided at the trial.

In any event, bare perusal of the plaint discloses a cause of action against the defendants and the same does not seem to be barred by any law.

Thus, the tribunal rightly held that the plaint was not liable to be rejected. However, the observations of the tribunal with regard to the merits of the case in deciding the application filed under Order 7 Rule 11 of the CPC shall be tentative and shall not be binding on the tribunal while deciding the suit. The tribunal will decide the suit on its own merits on evidence and on the documents that will be produced by the respective parties.

The cost of Rs.15000/- is waived, as this Court does not find any reason to impose costs on the petitioner as a litigant is always at liberty to approach the Court with his/her own contentions.

Whether these contentions have merit or not is a matter of law and as such the contentions can always be rejected. I do not find any malafide intention on the part of the petitioner. The other parts of the order impugned remain unaltered. This revisional application is restricted only for the consideration as to whether the plaint should be rejected or not. The learned Court below will proceed with the suit and other applications on their own merits without being influenced by any observations made in this order.

With the above observations the revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)