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09.08.2021
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In the High Court at Calcutta
Civil Jurisdiction
Appellate Side

C.O. No.541 of 2021

(Via video conference)

Bholanath Goswami
-Vs.-
Hiralal Kedia & Ors.

Mr. Amitabha Ghosh,
Mr. Sk. Sujauddin
...for the petitioner

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta
... for the opposite parties

The grievance of the defendant/petitioner is that the trial court acted without jurisdiction in rejecting the defendant's application under Order VII Rule 11 of the Code of Civil Procedure. Learned counsel for the petitioner contends that the suit is barred by law on two scores:

First, the cause of action of each of the plaintiffs is different and distinct from each other, being based on different deeds in respect of separate properties. It cannot be said that any of the plaintiffs have interest over the schedules other than the one, which describes the said

plaintiff's purchased property. Hence, the suit is bad for mis-joinder of causes of action.

Secondly, it is contended that the plaintiffs have virtually admitted that they have been dispossessed by the defendant, in their plaint; however, no relief of recovery of possession has been sought. Hence, the suit is *ex facie* barred under Section 34 of the Specific Relief Act, 1963.

Learned counsel appearing for the plaintiffs/opposite parties argues that the point of mis-joinder of causes of action was not raised specifically in the court below, which is evident from the application under Order VII Rule 11 of the Code. That apart, since the shares of the plaintiffs do not appear to have been partitioned by metes and bounds, as per the pleadings of the plaint, although the plaintiffs purchased by virtue of different deeds, they are still co-owners of each other in view of the plot of land, shares of which were purchased, being the same.

By placing reliance on the pleadings in the plaint, learned counsel for the opposite parties also submits that the plaintiffs categorically stated in the plaint that the defendant does not have possession in respect of the suit property, but the same vests with the plaintiffs. Mere

averments to the effect that the plaintiffs are not physically residing at the locale cannot be interpreted *ipso facto* to be the admission of having been dispossessed.

As far as the question of recovery of possession is concerned, the plaintiffs have pleaded categorically in paragraph no. 6 of the plaint that the defendant/petitioner has/had no iota of right, title, interest and possession in respect of any portion of the suit property. It has further been stated that the defendant is a land broker in the locality and, with the help of anti-socials, is creating pressures upon the persons, who have purchased land in the locality but not residing therein, with the view to purchase such land at a lower price. That apart, in paragraph no. 7 of the plaint, it has been specifically pleaded that the defendant, in collusion with his men and agents, has threatened to dispossess the plaintiffs from the suit property and to enter into the suit property forcibly and make construction thereon.

Such pleadings in the plaint, on a plain and meaningful reading, clearly show that the plaintiffs have categorically pleaded that they are in possession but not physically residing at the locality of the suit property. It has also been

averred that the defendant is attempting to oust the plaintiffs from the suit property, thereby, in a way, stating that the plaintiffs are already in possession thereof. Hence, the question of the suit being barred under Section 34 of the Specific Relief Act, 1963, on the pleadings of the plaintiff itself, does not arise.

Insofar as mis-joinder of causes of action is concerned, looking into the amended plaintiff (which has been handed over in Court today by learned counsel for the opposite parties and agreed by learned counsel for the petitioner to be the last-standing plaintiff in the suit), although the plaintiffs, in paragraph nos. 1 to 3 of the plaintiff, have pleaded title to different portions of plot nos. 976 under Mouza-Dakshindari, P.S.-Lake Town, by separate deeds of purchase, it does not appear from the pleadings of the plaintiff that such different shares/portions of the said plot were partitioned by metes and bounds, either by way of a decree of court or by a lawful partition deed. In the absence of such averment, it is clear that, at least as per the plaintiff, the different parcels of the subject-matters of the suit, delineated in schedules A, B and C of the same, are unpartitioned portions of the same plot of land.

Moreover, paragraph 10 of the plaint clearly discloses that the cause of action for the suit arose on the same date, that is, September 17, 2016, when the defendant threatened the plaintiffs of dispossession, with regard to the entire suit property, comprised of various schedules.

Keeping in mind the language of Order II Rule 3(1) of the Code of Civil Procedure, any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit. Such provision finds place in the statute in order to avoid unnecessary multiplicity of proceedings and conflict of decisions.

Since the cause of action for the present suit, as mentioned in the plaint, arises from the same factum for all the plaintiffs, at the instance of the same defendant, the mere fact that the plaintiffs claim by virtue of different sale deeds is not germane vis-à-vis the relevant claim in the suit.

Needless to mention, the issues raised in the application under Order VII Rule 11 of the Code of Civil Procedure, having not been decided on

merits at the stage of deciding an application for demurrer, will be kept open for the trial court, to be decided on taking evidence in accordance with law, if raised, without the trial court being prejudiced in any manner by any of the observations made herein and/or in the impugned order.

However, the trial court acted well within its jurisdiction in passing the impugned order by rejecting the application under Order VII Rule 11 of the Code.

Accordingly, C.O. No. 541 of 2021 is dismissed on contest, thereby affirming the order impugned herein.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)