

13.08.2021
(S/L-11)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 850 of 2021

Devendra Kumar Mishra
-Vs-
Rajendra Kumar Mishra & Ors.

Mr. Arijit Bardhan,
Mr. Rishabh Dutta,
..... For the petitioner.

Mr. Tapas Kumar Bhattacharya,
Mr. Monis Banerjee,
..... For the Opposite Party.

The defendant no. 1 in a suit for declaration of title, recovery of possession and injunction is the petitioner of the present application under Article 227 of the Constitution of India which is directed against the order dated March 19, 2021 passed by the 1st Court of learned Civil Judge (Junior Division), Sealdah, 24-Parganas (South) in the said suit being Title Suit no. 360 of 2020.

The defendant no. 1 sought for rejection of the plaint of the said suit under Order VII Rule 11(d) of the Code of Civil Procedure on the ground that it is barred by law.

The learned Trial Judge by the order impugned has dismissed the said application holding that statement made by the plaintiff in the plaint does not show without any doubt that the suit is specifically barred by any law in force.

Mr. Arijit Bardhan, learned advocate appearing on behalf of the petitioner referring to a portion of the averments made in paragraph 5 of the plaint vis-à-vis the reliefs sought for in the suit, particularly, the relief prayed under prayer (d), submits that the jurisdiction of the Civil Court to grant such relief to the plaintiff is barred by virtue of Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 (hereinafter referred to as the “said Act” in short) inasmuch as the said relief of the plaintiffs is based on the decision of an issue which in terms of sub-Section (3) of Section 5 of the said Act can only be decided by the Thika Controller appointed under the said Act, therefore, according to him the learned Trial Judge has misdirected himself in holding that the suit is not barred by any law for the time being in force.

Responding to the said argument of Mr. Bardhan, Mr. Tapas Kumar Bhattacharya, learned Counsel appearing on behalf of the plaintiff/opposite party no.1 relying on the decision of the Hon’ble Supreme Court in the case of ***Pawan Kumar vs. Babulal since deceased through legal representatives & Ors.*** reported in **(2019) 4 Supreme Court Cases 367** submits that for the purpose of Order VII Rule 11 of the Code, the plaint is to be read

wholly and meaningfully and if the plaint of the said suit is so read, it would appear that all of the reliefs sought for in the said suit are not barred by any law, as suggested by Mr. Bardhan.

Mr. Bhattacharya further submits that the plaintiff seeking amendment of the plaint of the said suit has already filed an application under Order VI Rule 17 of the Code and pending consideration of the said application, prayer for rejection of the plaint is pre-matured.

Heard learned counsel for the parties, perused the materials-on-records.

Sub-section (3) of Section 5 of the said Act mandates that if any question arises as to whether a person is a Thika tenant or not or whether the land in question is a Thika land or not, the Controller, either on his own motion or upon receiving any information, may, after examining all such documents and particulars as may be considered necessary, enquiry upon and decide such question. The said sub-section of the said Act is quoted below for ready reference:-

**“5.
 (1).....
 (2).....
 (3) If any question arises as to whether a person is a thika tenant or not or whether the land in question is thika land or not, the Controller, either on his own motion or upon receiving any information, may, after giving the persons interested an opportunity of being heard and after examining all such documents and particulars as may**

be considered necessary, enquire upon and decide such question.”

Section 21 of the said Act puts a bar to the jurisdiction of the Civil Court to determine any matter, which, by or under this Act, is required to be decided by or dealt with by the Controller.

Section 21 of the said Act is quoted below for the sake of convenience:-

“21. Bar of Jurisdiction.- No civil court shall have jurisdiction to decide, or to deal with, any question, or to determine any matter, which, by or under this Act, is required to be, or has been, decided or dealt with, or which is to be, or has been, determined, by the Controller or the appellate or other authority specified in the provisions of this Act, and no order or judgment passed, or proceedings including execution proceedings commenced, under the provisions of this Act shall be called in question in any civil court.”

It appears from the record that in the above quoted portion of paragraph 5 of the plaint the plaintiff has claimed that the defendant no. 1 has illegally and fraudulently with the support of forged and fabricated documents intends to insert the name as a owner of the property and the authority of Thika Controller as well as the Kolkata Municipal Corporation relying upon the said forged manufactured documents recorded the name of the defendant no.1 as a Thika Tenant with respect to the entire suit property.

The relevant extracts from the said paragraph is quoted below for ready reference:-

“5.and in the year of 2009 the plaintiff gathered knowledge from the reliable source that taking advantage of the same the said Devendra Kumar Missir illegally and fraudulently, with the support of forged and fabricated documents intend to insert the name as a owner of the property and the authority of Thika Controller as well as the Kolkata Municipal Corporation relying upon the said forged manufactured documents recorded the name of the defendant no.1 as a Thika Tenant with respect to the entire suit property being premised No. 9/2, 9/3 and 9/4, Omda Raja Lane, Police Station Narkeldanga, Kolkata-700 015 and immediately thereafter on 16.09.2009 the plaintiff lodged a written complaint stating such illegal act of defendant No.1 before the authority of Thika Controller, Kolkata Thika Tenancy Govt. West Bengal, 35, Gopal Nagar Road, Kolkata-700 027 as well D.G. Building Kolkata Municipal Corporation, 5, S.N. Banerjee Road, Kolkata-700 013 ”.

The plaintiff in the suit has prayed for different reliefs such as declaration of his title over the suit property along with defendants Nos. 2 & 3, declaration that defendant No. 1 is the illegal occupier and have no right, title and interest in respect of the suit property, recovery of possession and declaration declaring the papers and documents in respect to the ownership manufactured by the defendant No. 1 is illegal and null and void in the eye of law.

Some of the said reliefs on the face of it may not come within the sweep of the bar contemplated under Section 21 of the said Act but the relief sought under prayer (d) cannot be granted to the plaintiff without resolving the issue raised in the paragraph 5 of the plaint.

The said prayer (d) is quoted below:-

“d. declaration declaring the papers and documents in respect to the ownership manufactured by the defendant No. 1 is illegal and null and void in the eye of law;”

The bar under Section 21 of the said Act may not come in the way of granting some of the reliefs sought for in the suit but a part of the plaint cannot be rejected under Order VII Rule 11 of the Code [See ***Sopan Sukhdeo Sable & Ors. vs. Assistant Charity Commissioner & Ors. reported at (2004) 3 SCC 137***], therefore, the entire suit comes under the mischief of the said provision of the said Act.

It is too ambitious an argument that since the application for amendment of the plaint is pending for consideration, the prayer for rejection of the plaint under Order VII Rule 11(d) of the Code is pre-matured.

The averments of the plaint as it stands on the date of filing of an application under Order VII Rule 11 of the Code are only relevant for the purpose of the said provision of the Code.

There is no dispute to the proposition of law laid down in the decision of the Hon'ble Supreme Court **(2019) 4 Supreme Court Cases 367 (supra)** relied on by Mr. Bhattacharya, that for the purpose of rejection of the plaint under Order VII Rule 11 of the Code, the plaint is to be read wholly and meaningfully but in facts and circumstances of the present case the said decision is of no help for Mr. Bhattacharya's client.

In view of the discussion made above, the plaint of Title Suit No. 360 of 2020 pending before 1st Court of learned Civil Judge (Junior Division), Sealdah, 24-Parganas (South) is rejected under Order VII Rule 11 (d) of the Code.

C.O. 850 of 2021 is thus allowed without any order as to 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.)