

24.9.
2021

CO 1418 of 2021

Sri Prahlad Kumar Pradhan
-vs-
Sri Asamanja Chowdhury & anr.
(Via Video Conference)

Mr. Bharat Chandra Simai
... for the petitioner

The petitioner has challenged the order No. 73 dated September 4, 2013 passed by the learned Civil Judge (Senior Division), Ghatal in connection with Title Suit No. 46 of 2007.

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The petitioner filed an application under Order 7 Rule 11 of the Code of Civil Procedure contending that the plaint fails to disclose a cause of action.

Mr. Samai, learned advocate for the petitioner submits that the plaintiff has also not paid the requisite Court fees at the time of filing of the instant suit.

I have heard the learned advocates for the parties and considered the materials on record.

Order 7 Rule 11(b) of the Code of Civil Procedure provides that where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so, the plaint shall be rejected. Mr. Samai, learned advocate for the petitioner fails to point out any such direction passed by the Court upon the plaintiff to correct the valuation. As such the said

provision is not attracted in the instant case.

In the application under Order 7 Rule 11 of the Code, the petitioner contended that the prayer for partition of the suit property is not maintainable as the plaintiff /opposite party no. 1 herein claims to have purchased a specific demarcated portion of the property.

I have perused the plaint. The opposite party no. 1 filed the instant suit for declaration of title and for confirmation of possession. Alternatively, a decree for partition was prayed.

After going through the plaint it does not appear that the plaint fails to disclose a cause of action. The learned Trial Judge applied the correct legal tests and by reasoned order rejected the application under Order 7 Rule 11 of the Code. The Lower Revisional Court exercising jurisdiction under Section 115(A) of the Code, in my view, was also justified in not interfering with the order passed by the learned Trial Judge. The orders impugned do call for any interference by this Court under Article 227 of the Constitution of India.

Accordingly, CO 1418 of 2017 stands dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for,, be given to the learned advocate for the parties on usual undertakings.

(Hiranmay Bhattacharyya, J.)

