

08.04.2021
Ct. 7
D/L 22
ab

C.O. 3126 of 2018
(Via Video Conference)

Sanjit Chakraborty & Ors.
-Vs-
Binoy Nandi @ Chotka Nandi

Mr. Arup Krishna Das,

... for the petitioners

The defendants in a suit for declaration of title and permanent injunction have preferred the instant application under Article 227 of the Constitution of India challenging an order being No. 18 dated June 13, 2018 passed by the learned Civil Judge (Junior Division), 4th Court at Sealdah in Title Suit No. 308 of 2016.

By the order impugned, the petitioners' application under Order VII Rule 11 of the Code of Civil Procedure was rejected. Being aggrieved, the defendants/petitioners have preferred the instant application.

The learned advocate for the defendants/petitioners draws the attention of the Court to the averments made in paragraph 15B of the plaint wherein it has been specifically pleaded that the earlier suit filed by the present plaintiffs was dismissed on the ground of maintainability.

The learned advocate for the petitioners submits that it would be evident from the pleadings as well as the judgement of the earlier suit that the present suit is barred under Order II Rule 2 of the Code of Civil

Procedure as also that the suit is hit by the principles of *res judicata*.

It is well settled that at the time of deciding an application under Order VII Rule 11 of the Code of Civil Procedure, the Court has to confine its scrutiny on the statements made in the plaint and cannot take into consideration any document and/or the contentions of the defendants as to the maintainability of the suit raised in the application for rejection of plaint which is not evident from the plaint itself. The plaint can be rejected under Order VII Rule 11 of the Code if it appears from the statements in the plaint that such suit is barred by law.

It does not appear from the statements made in the plaint that the same is barred by law. This Court is thus of the considered view that the plaint of the instant suit cannot be rejected under Order VII Rule 11 of the Code.

The learned Judge of Court below supplied cogent reasons for rejection of the application under Order VII Rule 11 of the Code of Civil Procedure. The order impugned does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

Accordingly, C.O. 3126 of 2018 stands dismissed without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(**Hiranmay Bhattacharyya, J.**)