

DL. March 7,
19. 2022

S.A. 56 of 2021

Harish Chandra Dhandhanian @ Aggarwal & anr.

Vs.

Kolkata Port Trust

Mr. Anirban Roy,
Mr. Sanjib Seth,
...for the appellants.

Mr. Santosh Kumar Roy,
Ms. S. Chakraborty,
...for the respondent.

We have heard Mr. Anirban Roy, learned advocate, on behalf of the appellants on the point of admission of the appeal.

The appellants filed a suit being Title Suit No. 243 of 2006 subsequently renumbered as Title Suit No. 4617 of 2014 before the learned Civil Judge (Junior Division), Fourth Court at Howrah, for declaration and injunction. The declaration sought was to the effect that the property described in schedules 'A' and 'B' to the plaint originally belonged to the Board of Trustees of the Port of Calcutta and that the Board of Trustees of the Port of Calcutta had granted a lease in favour of one Ramaprasad Shaw and Shew Safar Prasad Shaw by virtue of a deed of lease dated February 22, 1949 and that the proceeding initiated by the Port Trust under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was illegal and consequently the order passed by the Estate Officer for eviction of the plaintiffs/appellants under Section 5 of the said Act is also illegal.

The Kolkata Port Trust contested the suit before the trial court wherein the point of maintainability of the suit was raised.

The trial court noticing Section 15 of the Major Port Trust Act, 1963 dismissed the suit upon holding that the suit was not maintainable. The first appellate court affirmed the judgment of the trial court.

Mr. Roy fairly submits that an appeal ought to have been filed against the order of eviction passed by the Estate Officer instead of filing the instant suit. He prays that liberty may be granted to the appellants to file an appropriate proceeding in accordance with law. Mr. Roy further submits that since the appellants were proceeding on a belief that the suit was maintainable and were advised to file such suit, in an adversary procedure being a litigant they should not suffer.

There cannot be any doubt that the suit is not maintainable. It is not in dispute that in a proceeding initiated before the Estate Officer under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, the Estate Officer passed an order against the appellants on July 4, 2000 followed by an order dated October 19, 2006. These orders could not have been challenged in the suit in view of Section 15 of the said Act. the remedy lies in preferring an appeal under Section 9 of the said Act before the District Judge of the district in which the public premises is situated.

In view of clear provisions of law, in our opinion, the suit is not maintainable and, as such, the second appeal is

summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

This order, however, shall not prevent the appellants to take recourse in accordance with law.

At this stage, Mr. Roy submits that the appellants may be permitted to take the plea of Section 14 of the Limitation Act as the appellants had initiated proceeding bona fide in court having jurisdiction and since the appeal is dismissed for defect of jurisdiction.

We leave this issue to be decided by the appropriate forum, if an appropriate proceeding is initiated by the appellants in accordance with law.

There will be no order as to costs.

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)

dns