

S/L 27
18.11.2022
Court No.652
SD

CO 579 of 2020

Kasturi Basu
Vs.
Laxman Poddar & Ors.

Mr. Soumen Das

...for the Petitioner.

Being aggrieved and dissatisfied with the order no.23 dated 05.12.2019 passed by the learned Civil Judge (Junior Division), 2nd Court at Alipore in Title Suit No.55 of 2016, present revisional application has been preferred.

Since the order impugned suffers from inherent lack of jurisdiction, as such without serving notice upon the opposite parties, the revisional application is taken up for final disposal.

The plaintiff/petitioner filed a suit for defamation and permanent injunction against the opposite parties herein being Title Suit No.55 of 2016 before the learned Civil Judge (Junior Division), 2nd Court at Alipore praying for a decree for damages for Rs.50 lakhs each against the defendants/opposite parties and permanent injunction against them. The defendants/opposite parties entered appearance in the said suit filed written statement cum counter-claim claiming for mandatory injunction for removing illegal structure from the roof top. The plaintiff valued the said suit for the purpose of court fee at Rs.1000/-

in aggregate and the defendants/opposite parties denied the valuation of the said suit.

The petitioner/plaintiff valued the suit at Rs.1000/- but the plaintiff/petitioner has prayed for decree for damages of Rs.50 lakhs each against the defendants/opposite parties which has been ascertained by the plaintiff/petitioner at the stage of peremptory hearing. The plaintiff accordingly filed application under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure praying for return of the plaint for filing it before the appropriate forum having pecuniary jurisdiction, to try the same.

The learned trial court vide impugned order no.23 dated 05.12.2019 was pleased to reject plaintiff's application under Order VII Rule 10 for return of the plaint on the ground that the trial of the instant suit has already been commenced and the instant suit reached to the stage of defence witness and at this stage, the application under Order VII Rule 10 of the Code of Civil Procedure cannot be allowed and the suit is required to be disposed of on merit on the basis of evidence available on record.

While passing the aforesaid order, the learned trial court was pleased to observe that *"Therefore, from the above discussion it is evident that the plaintiff prayed for decree for damages of Rs.50 lakh but the suit has been valued at Rs.1,000/- and upon which Court fees paid by plaintiff in tune of Rs.110/- and hence it is obvious that the suit has*

been wrongly valued and this Court has no pecuniary jurisdiction to provide relief for the decree of damages of Rs.50 lakh”.

It is curious enough when the court below was of clear view that the suit has been wrongly valued and the court below has no pecuniary jurisdiction to try where relief for a decree of damage of Rs.50 lakh has been made then it is not clear what prompted him to reject the plaintiff's prayer for return of plaint for presentation before the appropriate court.

In view of the above, the revisional application being C.O.579 of 2020 is allowed.

The Order No.23 dated 05.12.2019 passed by the learned Civil Judge (Junior Division), 2nd Court at Alipore in Title Suit No.55 of 2016 is hereby set aside.

The court below is directed to return the plaint to the plaintiff/petitioner within four weeks from the date of receipt of the order, for presentation by the respective parties before the appropriate forum having jurisdiction, following procedure for return of plaint as laid down in Rule 10 and 10A of the Order VII of the Code.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)