

S/L 13
10.11.2022
Court No.652
SD

CO 931 of 2016

Sm. Mangla Patel & Anr.

Vs.

Amit Ghosh & Anr.

Mr. Nilanjan Bhattacharjee

Mr. A. Chatterjee

Mr. Saikat Dey

...for the Petitioners.

Mr. Chandranath Mukhopadhyay

Mr. Bhabani Prosad Mondal

...for the Opposite Parties.

This application has been preferred against order dated 18.12.2015 passed by the learned 5th Civil Judge (Junior Division) Howrah in Title Suit No.19 of 2012 in connection with an application made under Order 11 Rule 14 read with Section 151 of the Code of Civil Procedure.

The petitioners have contended that the opposite parties herein as plaintiffs filed Title Suit No.19 of 2012 and the petitioners are the defendants in the said suit. Petitioners further contended that the opposite party no.1 by virtue of an agreement with the Andul Raj Debuttar Estate represented by receiver appointed by the court, obtained possession of land measuring 1 cottah 10 chittacks and 14 square feet together with structure thereon with the right to raise structure on the said land and to induct tenants or occupiers therein under certain conditions and the said agreement was executed on November 28, 1994.

The opposite party No. 2 similarly entered into an agreement with the said Debuttar Estate through the said court appointed receiver and obtained possession of the property measuring 01 cottah 06 chittak 05 Sq.ft together with

structure there upon with the right to raise construction and induct tenants/occupiers. The said two parcels of land are adjacent to each other and the said agreement was executed on November 28, 1994. Accordingly, the opposite parties jointly raised structure under the agreement and had the right to induct tenants or licensee in the said property. The petitioners being known to the opposite parties and were in urgent need of temporary accommodation approached the opposite parties to allow them temporary accommodation in the new structure and the opposite parties duly considered and they agreed to let out the said premises to the petitioners jointly. As per agreement, the petitioners would pay the licence fee of Rs.1200/- on the tenth day of every English calendar month.

Petitioners further submits that the opposite parties filed the suit contending that the petitioners came to the property in November 2003 and since then the petitioners are avoiding in making payment of licence fee on various pretext and as such, the opposite parties instituted the suit for eviction of licensee and recovery of khas possession being Title Suit No.19 of 2012 before the learned 5th Civil Judge (Junior Division), Howrah. After receiving summons, the petitioners appeared before the court below and filed written statement.

The petitioners state that in the said suit one application under Order 11 Rule 14 read with Section 151 of the Code was filed stating that the petitioners have mentioned and referred a deed dated January 29, 2004 whereby the plaintiffs/opposite parties surrendered their right in the property and the said purported document has not been filed along with the written statement nor it was served upon the opposite parties. Said

document is required to be inspected by plaintiff/petitioners. The petitioners herein filed objection against the said petition stating that no such document dated 29.01.2004 is in existence.

During course of hearing, learned counsel appearing on behalf of the opposite parties submits that in the written statement the defendants have actually referred the deed of surrender in favour of the receiver by one written representation on 29.4.2004 at page 10 of the written statement but unfortunately the plaintiffs in their applications under Order 11 Rule 14 dated 20.12.2013 had prayed for direction upon the defendants to produce in court a document dated 29.01.2004, which does not have any existence.

Learned counsel for the petitioners submits that as there exist no such deed dated January 29, 2004 and they had in their written statement referred deed dated April 29, 2004, so they rightly answered in their written objection that there is no existence of any deed dated 29.01.2004 and they have not referred any such document in their written statement.

It is further submitted that this revisional application has simply taken birth due to typographical mistake occurred in the plaintiffs application under Order 11 Rule 14 of the Code, where they have inadvertently referred surrender deed dated 29.01.2004 instead of deed of surrender dated 29.04.2004 for discovery and inspection in terms of averment made in the written statement by the opposite parties/defendant.

Learned counsel appearing on behalf of the defendants/petitioners further submits that the document dated 29.4.2004 as referred in the written statement is in their custody and they are ready to disclose the document for

inspection by the plaintiffs, if learned court passes any such direction. He further submits trial court in fact by the impugned order directed defend to produce copies of all the documents as described in his written statement for inspection and practically in the written statement defendants have referred document dated 29.04.2004 and not any such deed dated 29.01.2004.

In view of the above, CO 931 of 2016 is hereby disposed of with a direction upon the defendants/petitioners herein to disclose the document dated 29.4.2004 as referred in the written statement before the trial court for inspection by the opposite parties/plaintiffs within a period of four weeks from the date of communication of the order, if such document or its copy is lying in their custody.

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.)