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C.O. 1372 of 2022

**Ram Prasad Laga
Vs
Jyotirprosad Shaw**

Mr. Sirsendu Sinha Roy, ... For the petitioner.

Mr. Ayan Banerjee, ... For the opposite party.

The subject matter of challenge in this revisional application is against the rejection of a prayer under Order 7 Rule 11 of the Code of Civil Procedure.

Learned advocate appearing for the petitioner submits that the learned Court below has erroneously rejected the prayer under Order 7 Rule 11 of the Code of Civil Procedure, without going deep into the facts and circumstances in this case.

The cause of action for the institution of suit, according to the petitioner, is conspicuously absent in the averments incorporated in the plaint.

It is thus contended by learned advocate for the petitioner that in the absence of cause of action being disclosed, the instant suit should not be allowed to be proceeded further.

Mr. Ayan Banerjee, learned advocate appearing for the opposite party, upon receiving copy of the revisional application disputes with the submission of petitioner, alleging that the issue of cause of action

has been appropriately gone into by the Court below, and there is no illegality committed by the Court below, while making rejection of the prayer for plaint.

It is thus submitted by Mr. Banerjee, there lies nothing to be interfered with.

Having considered the submissions of both sides, it appears that prayer for rejection of the plaint being rejected is the subject of challenge in this case, alleging absence of cause of action.

In the pending litigation, a decree for declaration has been proposed to be obtained in respect of a deed being No. 5435/82, so that the same may be treated to be null and void, with a further declaration that the same may be declared non est.

Upon perusal of the averments contained in the plaint, it appears that the debottar property has been transferred without having obtained the permission from the District Judge.

The averments incorporated in the plaint are sufficient to reveal the cause of action required for institution of the suit.

Upon perusal of the impugned order in context with the averments incorporated in the plaint, it appears that the impugned order does not call for any interference.

The revisional application is thus disposed of.

However, liberty is given to petitioner to challenge the maintainability of the suit, irrespective of rejection of the prayer for plaint.

This would not, however, prevent the Court below to decide the maintainability of the suit, upon framing necessary issues therefor, at the time of final hearing of the suit.

With this observation and direction, the revisional application stands disposed of.

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

(Subhasis Dasgupta, J)