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C.O. 1539 of 2022

**Sri Amit Kumar Sur
Vs
Sri Ajoy Kumar Paul & Ors**

Mr. Partha Pratim Roy,
Mr. Dibakar Bhattacharjee, ... For the petitioner.

Mr. Kanailal Mondal,
Ms. Susmita Pal,
Mr. Rajat Kumar Dhar,
... For the Opposite Parties.

The subject matter of challenge in this revisional application is against the order dated 21st April, 2022 passed by learned Civil Judge (Junior Division), 2nd Court, Baruipur in Title Suit No. 45 of 2017 declining to reject the prayer under Order 7 Rule 11 of the Code of Civil Procedure.

Mr. Partha Pratim Roy, learned advocate appearing for the defendant no. 1/petitioner submits that on the strength of an unregistered agreement for sale, allegedly executed in the year 1997, a suit for permanent injunction has been filed without enforcing the unregistered agreement for sale by inviting of a suit for specific performance of contract within the period of limitation.

Mr. Roy further submits that since no suit for specific performance of contract was filed within the period of limitation as available under the law, the instant suit should not be allowed to be proceeded,

and the plaint ought to have been rejected taking ground available under Order 7 Rule 11 (d) of the Code of Civil Procedure. Mr. Roy further contends that conditions required to be fulfilled by a transferee wanting to defend or protect his possession under Section 53A of the Transfer of Property Act, 1882, even could not be considered by the Court below while making rejection of the prayer under Order 7 Rule 11 of the Code of Civil Procedure.

Reliance is thus placed by Mr. Roy on a decision reported in **AIR 2002 SC 960** delivered in the case of **Shamrao Suryavanshi & Ors -Vs- Pralhad Bhairoba Suryavanshi by Lrs. & Ors**, to submit that by reason of the amendment, effected under Section 53A of the Transfer of Property Act, the transferee defending his possession may not be permitted to enforce his possession without inviting a suit for specific performance of contract within the period of limitation.

Per contra, Mr. Kanailal Mondal, learned advocate appearing for the opposite parties submits that at the stage of consideration of a prayer pertaining to rejection of plaint, the Court is not obliged to consider the nitty gritty of the facts and circumstances surfaced in a case, and the Court is thus strictly required to look into the averments of the plaint to find out the cause of action of the suit,

which has been sufficiently disclosed in the relevant averments contained in the plaint.

Supporting the order of the Court below, learned advocate for the opposite parties submits that there lies nothing to be interfered with the impugned order.

Having considered the submissions of both the sides, it appears that rejection of the plaint has been proposed upon attracting Order 7 Rule 11 (d) of the Code of Civil Procedure.

The conditions required to be fulfilled, while transferree endeavouring to protect his possession under Section 53 A of the Transfer of Property Act, as per ratio decided in **Shamrao Suryavanshi & Ors (Supra)** need to be strictly gone into.

In the application under Order 7 Rule 11 of the Code of Civil Procedure, filed by the petitioner, para 3 and 4 has disclosed grounds so as to contradict the provisions available under Section 53A of the Transfer of Property Act to protect the possession of the transferree/opposite party.

In course of hearing, it is disclosed by either of the parties to this case that there is no injunction order granted against the petitioner/defendant, and the written statement has already been filed. That being the position, the points now raised by the petitioner may be reagitated at the time of final

hearing of the suit upon framing a specific issue pertaining to the maintainability of the suit.

The revisional application is thus disposed of directing the Court below to frame a specific issue pertaining to the maintainability of the suit taking note of the objection raised in the written statement filed by the petitioner/defendant no. 1.

Liberty is given to the petitioner to raise all such points at the time of final hearing of the suit pertaining to the determination of the issue of maintainability of the suit.

While deciding the maintainability of the suit, the amendment that had taken place in Section 53A of the Transfer of Property Act must be duly addressed by the Court below vis-à-vis the provisions available under Section 53A of the Transfer of Property Act in context with the necessary conditions requiring fulfillment to protect possession of the transferee under Section 53A of the Transfer of Property Act, providing sufficient opportunity of hearing to either of the parties to this case.

Since written statement has already been filed, the logical conclusion of the suit may be reached at an early date without granting unnecessary adjournment, unless it is extremely unavoidable.

Petitioner is directed to make communication of this order to the learned court below.

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)