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Ct. 18
21.03.2022

C.O. No. 2334 of 2019

**Smt. Vimla Pugalia & Anr.
Vs.
Smt. Gayatri Devi Agarwal**

Mr. Amitabha Ghosh,
Ms. Nabanita Chatterjee,
Sk. Sujauddin ... For the petitioners.

Mr. Rupak Ghosh,
Mr. Balarko Sen,
Mr. Aditya Garodia,
Mr. Pintu Ghosh ... For the opposite party.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for eviction of licensee and is directed against Order No. 21 dated April 11, 2019 passed by the 2nd Court of learned Civil Judge, (Senior Division) at Barasat, District – 24 Parganas (North) in the said suit being Title Suit No. 644 of 2017.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioners under Order VII Rule 11 of the Code of Civil Procedure.

The petitioners sought for rejection of the plaint of the said suit on the ground that the opposite party by inducting the petitioners in the suit property has violated the provision of Section 15 of the West Bengal Government Land (Regulation of Transfer) Act, 1993 and in consequence whereof the lease in favour of the opposite party has been determined as such she cannot maintain the connected suit for eviction.

Mr. Amitabha Ghosh learned advocate appearing on behalf of the petitioners submits that Section 21 of the said Act of 1993 puts a bar to the jurisdiction of the learned Trial Judge to decide or deal with any question which is required to be decided or dealt with under the said Act of 1993, therefore, the learned Trial Judge has no jurisdiction to entertain the connected suit.

Mr. Amitabha Ghosh further submits that his clients are contesting the suit only on the defence that the suit is not maintainable in view of the restrictions under the provisions of the said Act of 1993.

Mr. Rupak Ghosh learned advocate for the opposite party submits that since the only defence of the petitioners in the suit is its maintainability, the suit may be decided on the said issue alone.

The learned Trial Judge has refused to reject the plaint of the said suit as prayed for by the petitioners holding, *inter alia*, that in the event the lessor, the opposite party herein by creating tenancy and/or license in the Government land violates any provision of the said Act of 1993, the Government of West Bengal can take appropriate steps but the provision of the said Act of 1993 cannot be construed to mean that the lessee cannot induct tenant or licensee in the property given to him by the Government under a deed of lease.

The grounds on which the issue of maintainability of the connected suit has been sought to be canvassed by the petitioners is not coming within the sweep of Order VII Rule 11 of the Code, this Court therefore is not inclined to interfere with the order impugned.

However, issue of maintainability of the connected suit since can be answered only on a question of law, the learned Trial Judge shall decide the issue of maintainability of the connected suit as framed hereunder:-

“whether the maintainability of the Title Suit No. 644 of 2017 has been affected by the restrictions of the provisions of Sections. 3, 15 and 21 of the West Bengal Government Land (Regulation of Transfer) Act, 1993?”

In view of the stand of the parties before this Court, the answer of the aforesaid issue shall determine the fate of the suit, the learned Trial Judge need not answer the other issues, if framed in the suit.

C.O. 2334 of 2019 is disposed of with the above terms, without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)