

24.11.2022
Item No.6
Ct. No.7
CHC
(disposed of)

C.O.2489 of 2022

Sk. Samim Rahaman & ors.

Vs.

Khodeja Bibi & ors.

Mr. Shah Jamal Hazra
...for the petitioners

Mr. Parimal Bhattacharjee,
Ms. Sima Majumder
...for the opposite parties

Mr. Shah Jamal Hazra, learned advocate appearing for the petitioners, while assailing orders dated 22nd January, 2020, and 4th June, 2022, passed by learned Judge, 4th Bench, City Civil Court, Calcutta, in Title Suit No.1215 of 2001, submits that by reason of the last amendment order, effected in the pleadings, the nature of the suit is for declaration, injunction and recovery of possession.

Admittedly, the prayer for recovery of possession has been proposed upon filing an amendment application disclosing therein the date of dispossession, before the suit was set for argument.

Without any controversy, plaintiffs proposing declaration have adduced their evidence providing chance to the defendants/opposite parties to cross-examine particularly on the point of recovery of khas possession, as already allowed by way of amendment.

Plaintiffs during the pendency of the instant litigation filed an application praying for direction upon the department to assess the requisite court fees for recovery of khas possession of the suit property involved in the suit.

While rejecting the order dated 22nd January, 2020, the court below observed as follows:

“Thus, in order to ascertain the valuation of the suit property, the plaintiffs have to file a cogent document to come to the conclusion about the approximate valuation of the suit property. The valuation which has been shown in exhibit-5 cannot be the market value since it was incorporated therein on the basis of the statements of the executants of that Deed of Partition.”

Subsequently, by order dated 4th June, 2022, the order dated 21st January, 2022, was proposed to be modified, which was also rejected by the court below.

Mr. Hazra, learned advocate appearing for the petitioners submits that this is a suit originally instituted in the year 2001, with a prayer for declaration and consequential relief, and in respect of the prayer for recovery of possession by reason of proposed amendment being allowed, the petitioners cannot be allowed to deposit the market value of the area.

Per contra, Mr. Parimal Bhattacharjee, learned advocate appearing for the opposite parties disputes

with the submission advanced by the petitioners alleging that the suit property, sought to have been recovered by way of decree of recovery of possession, may be granted, subject to the proof of the plaint case made out in the pleadings, but only upon deposit of additional court fees, to be assessed by the court below in accordance with law.

The market value, according to the opposite parties, needs to be deposited.

Having considered the submission of both sides, it appears that the bone of contention between the parties is with regard to the amount of the court fees required to be deposited by the petitioners with respect to their prayer for recovery of khas possession, subsequently added in a suit originally filed for declaration and injunction.

The Court Fees Act makes a distinction between the value of relief and the value of subject-matter, according to nature of suit, and the court fee is payable according to value of the relief. In the event of putting an arbitrary and unreasonable value on the consequential relief, in a suit for declaration and consequential relief, the court has the power to revise the same in accordance with law following objective standard for valuing the relief, whenever the same is available.

Upon perusal of the impugned order, it appears that such point may be best decided taking recourse to provisions of Sections 7(iv), 9, 11 of West Bengal Court Fees Act read with provisions of Section 4 & 8 of Suits Valuation Act, and in appropriate cases, if necessary upon calling for a report from a competent person, as disclosed in Section 12 of West Bengal Court Fees Act.

The revisional application is thus disposed of upon setting aside both the orders, with a direction upon the court below to reconsider the petition so that there may be fair assessment assessed by the court below in respect of the additional court fees, required to be deposited by the petitioners, after adhering to the provisions of the law. Such exercise, may be completed within four weeks from the date of communication of this order.

Before accepting the report, if any at all called for, for the adjudication of the assessment of the additional court fees, the objection of the opposite parties/defendants, if raised, may also be resolved in accordance with law.

Parties are directed to make communication of this order to the court below.

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

(Subhasis Dasgupta, J.)