

07.09.2022
KC(38)

C.O. 2604 of 2022
K. Bardhan Roy
-versus-
Sitikantha Neogi and Ors.

Mr. Reazul Islam.....For the petitioner.

Learned advocate for the petitioner is present.

Heard learned advocate for the petitioner.

This application is directed against the order dated 25th April, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Title Suit No. 15 of 2021. The petitioner being aggrieved by the order has come up with the present application.

Learned advocate for the petitioner submits that the suit filed before the learned trial court is not at all maintainable in the eye of law and the plaintiff suppressed the fact of pendency of another suit and has filed the instant suit. It is further submitted by learned advocate that the learned trial judge without considering the facts of the case has dismissed the application under Order VII Rule 11(d) of the Code of Civil Procedure (hereinafter the Code).

Upon considering the contention of the petitioner/defendant in the application under Order VII Rule 11(d) of the Code it appears that the petitioner/defendant has contended that the plaintiff and/or his

predecessor-in-interest has filed Ejectment Suit No. 155 of 2007 against the defendant above named for recovery of possession and other consequential reliefs which is still pending before the said court. It is further contended that since the cause of action and matter in issue of both the suits and the parties of both the suits are same or substantially the same, the instant suit is barred under the law. It is also contended that Title Suit No. 15 of 2021 is barred under Order II Rule 2 of the Code.

Learned advocate relies upon a decision of this Court passed by Hon'ble Justice Indira Banerjee in Kalabati Debi and Ors. –vs- Pratapi Devi, reported in 2010 (3) CHN (CAL) page 690.

Upon perusal of the order passed by the learned trial court it appears that the trial court came to the conclusion that on perusal of the plaint of the present suit, the application as well as submission of both the parties the court was of the view that the provision of Order VII Rule 11(d) of the Code was not applicable to the present plaint as per the version of the defendant that Ejectment Suit No. 155 of 2007 and the present suit is same and similar in the point of issue as well as the subject matter. It is further observed that on standing upon general idea it can be said that issues of the ejectment suit are categorically different to the issues of the other nature suit and the defendant did

not file any plaint of Ejectment Suit No. 155 of 2007 and the court could not get the opportunity to compare the issues of both the suits and mere verbal submission is not sufficient.

One of the basic principles with regard to dismissal of application under Order VII Rule 11 of the Code, as has been held in different judicial pronouncements, is that the court while deciding an application under Order VII Rule 11 of the Code has to confine itself to the pleadings of the plaint and there is no scope for the court to go to the pleadings of any other document or written statement or plaint of any other suit.

Upon consideration of the decision of this Court, relied upon by learned advocate for the petitioner, this court finds that the observations in that case were made to the suits which are barred under Order II Rule 2 of the Code and the observation was made in a second appeal. Thus, the observation was not made on an application under Order VII Rule 11 of the Code. Therefore, the said decision cannot be applied in this case.

Thus, upon perusing the petition under Order VII Rule 11(d) of the Code and considering the observations made by the learned trial court, I do not find any error on the part of the learned judge while disposing of the application under Order VII Rule 11(d) of the Code. It is

further made clear that with regard to the pleas taken by the defendant/petitioner in the application under Order VII Rule 11(d) of the Code, the same being the provisions of law and fact, can always be raised at the time of framing of issues regarding maintainability, which can be decided at the time of trial of the suit.

With the above observation, this application is disposed of.

(BISWAROOP CHOWDHURY, J.)