

11.08.2022
(D/L-47)
Ct.-18
(Susanta)

C.O. 3385 of 2018

Dinesh Shaw
-Vs-
Smt. Gulachi Devi & Ors.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustov Bhattacharya,
..... For the Petitioner.

Mr. Tapan Kumar Rakshit,
... For the Opposite Party No. 1.

Mr. Surajit Roy,
.... For the Opposite Party Nos. 4-14.

The petitioner is the defendant no. 1 of the Title Suit No. 1517 of 2017 pending before the 7th Court of learned Civil Judge (Junior Division), Howrah.

The order dated September 11, 2018 passed in the said suit is under challenge in the present application under Article 227 of the Constitution of India.

The defendant no.2, the petitioner herein by an application prayed for a direction upon the plaintiff to take back the plaint of the said suit as she did not file Court fees at the rate of market value of the suit property.

The learned Trial Judge by the order impugned has dismissed the said application holding, inter alia, that the plaintiff is not the

executant of the impugned deed of lease and has not prayed for recovery of possession of the suit property as she claimed to be in possession.

The plaintiff is claiming to be the prior lessee under the defendant no. 1 and has challenged the validity of the lease deed executed in favour of his son, the defendant no. 2, the petitioner herein, inter alia, on the grounds that the said subsequent lease deed was executed during the subsistence of her lease in respect of the suit property.

Mr. Mukherjee, learned advocate for the petitioner submits that the plaintiff being a party to the impugned deed should have prayed for cancellation of it instead of a mere declaration.

The plaintiff was a confirming party to the impugned deed of lease, nonetheless she has alleged that her signature in the said deed was obtained by practicing fraud.

She, however, was not the lessor of the said deed or the lessee either, as such to avoid it, it is sufficient to seek an appropriate decree of declaration subject to the condition that she is in possession of the suit property.

The plaint lacks sufficient assertion of plaintiff's possession over the suit property as such the finding of the learned Trial Judge in the order impugned that *it is also seen that the*

plaintiff has not prayed for recovery of khas possession and has claimed to be in possession of the suit property is not sustainable.

The defendants, therefore, if so advised, are entitled to question the maintainability of the suit as the plaintiff has not sought for further relief which she is able to seek than a mere declaration of her title over the suit property.

The order impugned, except aforesaid, does not call for any interference.

C.O. 3385 of 2018 is disposed of with the above observations 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.)