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25.04.2022

C.O. No. 3857 of 2019
I.A. No : CAN 2 of 2020 (Old No : CAN 4544 of 2020)

Eden Realty Ventures Private Limited
Vs.
N.S.T. Housing Development Private Limited &
Ors.

Mr. Siddhartha Banerjee,
Mrs. Soni Ojha,
Mr. Soumajit Majumder ... For the petitioner.

Mr. Anindya Lahiri,
Mr. Samrat Dey Paul ... For the O.P. No. 1.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a suit for declaration of title and recovery of possession and is directed against order dated September 02, 2019 passed by the learned Civil Judge, (Junior Division) at Bidhannagar, District – 24 Parganas (North) in the said suit being Title Suit No. 199 of 2018.

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

Mr. Siddhartha Banerjee, learned advocate for the petitioner submits that the plaintiff in the suit is seeking recovery of possession of the suit property from the petitioner describing him as a trespasser therein upon declaration of title, as such the plaintiff cannot value the relief prayed for in the suit according to his own choice. The market value of the suit property would determine the value of the suit which, if valued properly, shall exceed limit of the pecuniary jurisdiction of the learned Trial Judge.

Mr. Banerjee referring to the decision of the Hon'ble Supreme Court in the case of ***Sujir Keshav Nayak Vs. Sujir Ganesh Nayak*** reported in **(1992) 1 Supreme Court Cases 731** contends that the valuation disclosed by the plaintiff is to be normally accepted and in the event the Court is satisfied that the valuation of the suit is arbitrary, can direct the suit to be properly valued, the said recourse is only available when the suit is filed before a Court of unlimited pecuniary jurisdiction but such course is not available to the plaintiff when the suit is filed in a Court of limited pecuniary jurisdiction and in such a situation, only option left is the rejection of the plaint of the suit.

Mr. Anindya Lahiri, learned advocate for the plaintiff, the opposite party no. 1 herein on the other hand submits that the plaintiff in the suit is seeking recovery of possession of the suit property on the strength of its title and it is not a suit for recovery of possession from a trespasser as such the plaintiff is entitled to evaluate the relief sought for in the suit according to his own choice. He further submits that the learned Trial Judge in view of such nature and scope of the suit has rightly dismissed the said application for rejection of the plaint.

Heard learned advocate for the parties, perused the materials on record.

The claim of the defendant of having title over the suit property through a deed of lease has prompted the plaintiff to file the suit.

In the suit, the plaintiff is praying decree of recovery of possession upon declaration of its title. The aforesaid claim of the defendant is the cause of action in the suit as such it

is not a suit for recovery of possession of the suit property from a trespasser upon declaration of title simplicitor.

In view of such nature of the suit and the relief sought for therein, the value of the suit and the Court fees payable on it will not be determined in terms of Section 7(v) of the West Bengal Court Fees Act, 1970 and as a consequence thereof, the plaint of the suit is not rejectable under the provision of Order VII Rule 11 of the Code.

The decision of the Hon'ble Supreme Court reported in **(1992) 1 Supreme Court Cases 731(supra)** cited by Mr. Banerjee, in the facts and circumstances of the present case has no application.

The order impugned, therefore, does not call for any interference. C.O. 3857 of 2019 is dismissed without any order as to costs.

In view of the dismissal of the revisional application, the connected application being I.A. No : CAN 2 of 2020 (Old No : CAN 4544 of 2020) has become infructuous and is also dismissed accordingly 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.)