

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

Present:

The Hon'ble Justice Debangsu Basak

SA 2 of 2022

**Sri Ajit Kumar Agarwala
Vs.
Terai Tea Company Limited & Ors.**

For the Appellant : Mr. Sagar Bandyopadhyay
Mr. Jagriti Mishra
Mr. Sitesh Kumar Gupta

For the : Mr. Subir Kr. Saha
Opposite Parties Mr. Bikramditya Ghosh

Heard on : June 8, 2022

Judgment on : June 8, 2022

Debangsu Basak, J.:-

1. The second appeal is taken up for hearing. The private respondent no. 12 is represented.
2. None appears for the other respondents despite service.
3. The second appeal was admitted by the order dated March 11, 2022 on the following questions of law :

“(i) Whether leave is necessary under Order II Rule 4 of the Code of Civil Procedure, 1908 in a suit for declaration of title and recovery of possession based on the same cause of action?”

(ii) Whether a Court can return a finding that the relief prayed for by the plaintiff as not maintainable without framing an issue with regard thereto?”

4. The petitioner as the plaintiff filed a suit for declaration and recovery of possession. The plaintiff claims to be the owner of the immovable property concerned by virtue of inheritance. The plaintiff claims that the defendant no. 1 entered into possession of the suit property as a licensee. Such licence was revoked. The defendant no. 1 refused to vacate the immovable property concerned. The other defendants are proper parties to the suit. Consequently, the defendant No. 1 was liable to be evicted. The suit was dismissed although not being contested by the defendants. An appeal was preferred. On appeal, the Appeal Court passed a decree for eviction of the defendant Nos. 1 and 2 from the suit property without granting a decree for declaration as prayed for by the plaintiff in the suit.

5. The Appeal Court by the impugned judgment and order dated March 18, 2019 held that the plaintiff was the owner of the immovable property concerned by way of inheritance. However, the Appeal Court did not grant the declaration of ownership as sought for by the plaintiff. It is on the basis of a finding of ownership of the plaintiff in respect of the immovable property concerned and on the finding that the first defendant was a licensee and that such licence stood revoked, the Appeal Court proceeded to pass a decree for eviction against the defendant Nos.1 and 2 and permitted recovery of possession of the suit property.

6. The plaintiff aggrieved by the refusal of the Appeal Court to pass a decree of declaration of ownership as prayed for in the plaint in respect of

the suit property applied for review of the impugned judgment and order dated March 18, 2019 of the Appeal Court. Such review was rejected on December 24, 2019. Thereafter, the present second appeal was preferred against the judgment and decree of reversal dated March 18, 2019 of the Appeal Court.

7. Learned Advocate appearing for the plaintiff relies upon **AIR 1972 BOM 199 (Mrs. Jankibal Prahladrai Brijial Seksaria vs. Kashinath Raghunath Keldar); 1908 (8) Calcutta Law Journal 196 (Satish Chandra Mullick vs. Ashruffudin Ahmad & Ors.); AIR 2017 Cal 19 (Arun Kumar Jana & Ors. vs. Rabindra Patra & Ors.) and (2014) 14 SCC 502 (Venkataraja & Ors. vs. Vidyane Doureradjaperumal (Dead) through Legal Representative and Ors.)** for the proposition that, Order 2 Rule 4(c) of the Code of Civil Procedure, 1908 allows several reliefs to be claimed in the same suit so long as such reliefs emanate out of the same cause of action. According to the learned Advocate appearing for the plaintiff, the relief of declaration of ownership as well as the relief for recovery of possession emanate out of the title of the plaintiff in respect of the suit property and the license which stood revoked in favour of the defendant no. 1 of the same immovable property. According to him, once the Court finds that the first defendant is liable to be evicted from the suit property and grants the relief of recovery of possession to the plaintiff, it flows from such relief that the plaintiff is the owner of the immovable property concerned. That being the factual situation, the learned Appeal Court erred in not granting the relief of declaration of ownership as sought for by the plaintiff.

8. He relies upon Order 2 Rule 4 of the Code of Civil Procedure, 1908 and submits that such provision allows claims to be joined for recovery of immovable property where, such claims are based on the same cause of action. In the facts of the present case, he submits that, the reliefs in the plaint are governed by the provisions of Order 2 Rule 4(c) of the Code of Civil Procedure, 1908. The learned Appeal Court failed to take such fact into consideration while disallowing the prayer for declaration of title in respect of the immovable property concerned.

9. Learned Advocate appearing for the plaintiff relies upon Order 2 Rule 7 of the Code of Civil Procedure and submits that in the facts of the present case, none of the defendants contested the suit. Therefore, none of the defendants raised any objection as to mis-joinder of any cause of action. The issue of mis-joinder of cause of action could be raised by the defendants. Since the same was not raised, the learned Appeal Court erred in holding that the plaintiff is not entitled to the relief of declaration of ownership.

10. The plaintiff filed a suit being Title Suit No. 104 of 2016 in the Court of learned Civil Judge (Junior Division), Siliguri. The prayers in the plaint of such suit are as follows :

“a) For a decree for recovery of khas possession of the suit land in vacant condition from the Defendant Nos. 1 & 2;

b) For a decree declaring the right, title and interest of the said H.U.F. known as “Ajit Kumar Agarwala & others” over/upon the suit land;

c) For a permanent injunction in the form of mandatory order directing the Defendant Nos. 1 & 2 to remove all

obstruction, if stands in the suit land at its cost for handover the suit land in vacant condition to the Plaintiff who is “Kharta” of H.U.F. known as “Ajit Kumar Agarwala & others”;

d) For cost of the suit;

e) And for any other relief or reliefs which the Plaintiff to be entitled as per law in the land”.

11. The learned trial Judge refused to pass a decree in terms of the prayers of the plaint. The suit was dismissed by a judgment and order dated May 17, 2017. An appeal was preferred against the judgment and order of dismissal of the suit dated May 17, 2017 being Title Appeal no. 6 of 2017. Title Appeal no. 6 of 2017 was disposed of by a judgment and order dated March 18, 2019 by the learned Additional District Judge, 1st Court, Siliguri. By the impugned judgment and order dated March 18, 2019, the learned Appeal Court was pleased to set aside the judgment and order dated May 19, 2017 by the learned Trial Court. The learned Appeal Court was pleased to direct the defendant nos. 1 and 2 to hand over vacant possession of the suit land after removing all permanent structures standing thereon to the plaintiff immediately and under all circumstances within one month from the date of passing of the decree. The learned Appeal Court, however, did not pass a decree of declaration of the title in favour of the plaintiff in respect of the suit property although prayed for. The learned Appeal Court was pleased to construe provisions of Order 2 Rule 4 of the Code of Civil Procedure, 1908 and held that the plaintiff did not seek leave under such provision and, therefore, the plaintiff was not entitled to the relief of declaration.

12. Being aggrieved by and dissatisfied with the judgement and order dated March 18, 2019 of the Appeal Court, the plaintiff filed an application for review being Misc. Case No. 10 of 2019 under the provisions of Order 47 Rule 1 of the Code of Civil Procedure read with Section 114 thereof. Such review application was dismissed by the judgment and order dated December 24, 2019. Thereafter, the present second appeal was filed which was admitted on March 11, 2020 on the two questions of law noted hereinabove.

13. Order 2 Rule 4 of the Code of Civil Procedure, 1908 is as follows :-

“Only certain claims to be joined for recovery of immovable property.-

No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property except-

(a) Claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) Claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) Claims in which the relief sought is based on the same cause of action;

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.”

14. Order 2 Rule 4 of the Code of Civil Procedure governs joinder of causes of action in a suit for recovery of immovable property. It stipulates

that no cause of action shall, unless with the leave of the Court be joined with a suit for recovery of immovable property, except claim for mesne profit for arrears of rent in respect of the property claimed or any part thereof, claim for damages or breach of any contract under the property or any part thereof and claim in which the relief sought is based on the same cause of action.

15. Joinder of causes of action in respect of claim for immovable property is not barred. Causes of action can be joined. Causes of action of specified categories can be joined without the leave of the Court while others can be joined with leave of the Court. Under Order 2 Rule 4 of the Code of Civil Procedure such causes of action or the reliefs sought for which does not fall within the exception enumerated therein, can be joined with the leave of the Court. It provides three exceptions where no leave of the Court is required for their joinder in the plaint. Causes of action beyond the exceptions stipulated under Order 2 Rule 4 of the Code of Civil Procedure 1908 requires the leave of the Court for joinder. Order 2 Rule 7 of the Civil Procedure Code postulates a situation where objection with regard to mis-joinder of causes of action are raised. It stipulates that all objections on the ground of mis-joinder of causes of action should be taken at the earliest possible opportunity and in all cases where the issues are settled and unless the ground of objection arose subsequently and any such objection not so taken shall be deemed to be waived.

16. In the facts of the present case the plaintiff claims ownership of immovable property concerned by way of inheritance. It is on the strength of

such ownership that the plaintiff seeks to evict the first defendant as a licensee, under the plaintiff from the suit property. Therefore, in the facts of the present case, the plaint comes within the exception noted in Order 2 Rule 4(c) of the Code of Civil Procedure, 1908. The claim for ownership as also the claim for eviction are based on the claim of inheritance with regard to the ownership of the immovable property. Therefore, in my view no prior leave of the Court was required under Order 2 Rule 4 of the Code of Civil Procedure, 1908. The plaintiff was entitled to the relief of declaration as well as recovery of possession without any obligation on the plaintiff to obtain leave under Order 2 Rule 4 of the Code of Civil Procedure, 1908.

17. **Satish Chandra Mullick (Supra)** is of the view that, the defendant not taking any objection with regard to the joinder of causes of action is deemed to waive such objection.

18. The Bombay High Court in **Mrs. Jankibai Prahladrao Brijal Seksaria (Supra)** held that an objection under Order 2 Rule 4 is technical in nature and leave can also be granted at the appeal stage.

19. **Arun Kumar Jana and Others (Supra)** considers Section 34 in the Specific Relief Act and is of the view that a suit for declaration of title simpliciter is not maintainable.

20. **Venkataraja and Others (Supra)** is of the view that a declaratory suit without consequential relief is not maintainable.

21. In view of the discussion above, the first issue is answered by holding that the plaint of the suit is based on the same cause of action and, therefore, the suit falls within the purview of Order 2 Rule 4(c) of the Code of

Civil Procedure, 1908 and, therefore, no prior leave to institute the suit or to join the causes of action in the suit was required.

22. In view of the answer to the first issue being in the nature as noted herein, there will, therefore be a decree in terms of prayer (b) of the plaint.

23. In view of the finding returned in respect of the first issue in the suit, no observation need be made on the second issue framed by the order dated March 11, 2020.

24. Accordingly, SA 2 of 2022 is disposed of. There will be no order as to costs. Lower Court Records be sent down immediately.

[DEBANGSU BASAK, J.]