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03.03.2022
AB.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

CO 79 of 2021

Smt. Subhra Saha
-versus
Sri Niranjana Ghosh.

Mr. Amales Roy,
Mr. Debarshi Dhar,
Mr. Shreyas Marodia

...for the Petitioner.

This revisional application is directed against order no. 11 dated 9th April, 2021 passed by the learned Civil Judge (Senior Division) at Siliguri in Title Suit (P) No. 60 of 2020 by which an application under Order VII Rule 11 of the Code of Civil Procedure is rejected.

The plaintiff/opposite party filed a suit for partition and separation of shares in respect of the schedule property with consequential prayer for appointment of the partition commissioner to separate the shares by metes and bounds.

The plaint proceeds on an assertion that one Sabitri Debi Samal was an owner in respect of two cottahs of land recorded in R.S. Khatian No. 8/15 under R.S. Plot No. 69, corresponding to L.R. Plot No. 237, situated within Mouza Jitu, J.L. No. 78(Old) and 69 (New), P.S. Siliguri (Now Matigara), District Darjeeling. The said Sabitri Debi Samal sold, transferred and conveyed one cottah of the said land to the plaintiff/opposite party through a registered deed of sale on 11th December, 1991. Simultaneously, the brother of the plaintiff/opposite party also purchased the remaining land from the said vendor and both the plaintiff and his brother mutated their names in the

relevant records. Subsequently, they applied for amalgamation/consolidation of their respective land with the authority and also submitted a joint building plan, which was approved by the concerned Gram Panchayat on 11th June, 1993. The building was constructed over the entire plot of land, which was initially owned by Sabitri Debi Samal. Subsequent thereto, the brother of the plaintiff died leaving behind him surviving his wife and two daughters, who later on sold transferred and conveyed their right, title and interest, which they inherited from their predecessor in favour of the defendant/petitioner. The plaint further proceeds that the defendant/petitioner was attempting to make certain construction on the building so constructed and despite having protested by the plaintiff/opposite party he has banked upon in proceeding with the same, which constrained the plaintiff/opposite party to file a suit for partition.

After summon was served, the defendant/petitioner appeared in the suit and took out an application under Order VII Rule 11 of the Code praying for rejection of the plaint. The Trial Court dismissed the said application with categorical finding that the issue in respect of a cause of action is a mixed question of facts and law and, therefore, is required to be decided upon full-fledged trial.

Mr. Amales Roy, learned Advocate for the petitioner, submits that the Trial Court has misconstrued the tenet of the application and proceeded on the premise that the case for rejection is founded upon the eventualities provided under Clause (a) of Order VII Rule 11 of the Code. According to him, in fact, the rejection of the plaint was sought on the ground that the plaint is barred by law and in absence of any finding in this regard the impugned order is liable to be set aside. He put much more emphasis on

the word “amalgamation” used in the plaint to contend that the concept of amalgamation does not take away the right vested upon the party by a valid document touching the transferability of the right and, therefore, the suit for partition cannot be maintained. To be more precise, he wanted to contend that the word ‘amalgamation’ does not destroy the exclusiveness of the rights in respect of a well defined area and, therefore, he cannot be regarded as co-sharer in respect of an undivided property.

There is no dispute that the word “amalgamation” is to be construed in the perspective of legal provision contained therein. Many Municipal Laws have retained the provision of amalgamation and the construction of a structure thereupon, but admittedly there is no provision contained in the West Bengal Panchayat Act concerning the amalgamation of the plots. However, the fact remains that a building plan was alleged to have been submitted in respect of the entire plot of land jointly by the owners of their respective portions and the same was sanctioned. The structure constructed thereupon was enjoyed by both the owners and if a subsequent purchaser has stepped into the shoes of his vendor being heirs of one of the brothers of the plaintiff/opposite party, he cannot elevate his status nor can take any stand contrary to what was the stand of his vendor. The question of mingling of the property by virtue of the executive fiat in absence of any statutory provision is the question to be decided, more particularly, when the fact pleaded in the plaint runs through the common thread of the sanction of the building plan submitted jointly by the owners of the respective plots.

The scope under Order VII Rule 11 of the Code is very limited. The Court must travel on the peripheral of the plaint and shall not consider a case made out by

the defendant as and by way of defence on the facts disclosed either in the written statement or in an application under Order VII Rule 11 of the Code.

There is no ambiguity to the fact that there has been a structure constructed upon both the plots of land on the basis of a sanctioned building plan jointly submitted by both the brothers and, therefore, one of the issues, which would arise in the suit, is whether the suit for partition can be maintained in respect of a structure standing thereupon, which appears to be joint. Even if I accept the contention of Mr. Roy that the Trial Court has misguided itself in construing the application to have been filed under Order VII Rule 11 (a) of the Code, I do not find any difficulty in substituting my own views, if ultimately the conclusion arrived at by the Trial Court is found to be correct.

I thus do not find any illegality and/or infirmity in the impugned order.

The revisional application is dismissed.

There shall however be no order as to costs.

(Harish Tandon, J.)