

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 547 OF 2022

Rangadhar Hota and another

Petitioners

Mr. T.K. Mohanty, Advocate

-versus-

Sudhir Kumar Mallick and others

.... Opp. Parties

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.07.2022

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seek to assail the order dated 16th May, 2022 (Annexure-5) passed in Civil Revision No.01 of 2021, whereby learned Additional District Judge, Jajpur Road dismissed the revision and thereby confirmed the order dated 21st September, 2021 (Annexure-4) passed by learned Civil Judge (Senior Division), Jajpur Road in C.S. No. 59 of 2009 rejecting an application under Order VII Rule 11 C.P.C.
3. Mr. Mohanty, learned counsel for the Petitioner submits that the Opposite Party Nos.1 to 3 had filed C.S. No.59 of 2009-I for declaration of title, confirmation of possession and alternatively for recovery of possession as well as for consequential relief in respect of C.S. Plot No.820/02, which corresponds to Hal Plot No. 452.
4. The Petitioners as Defendants appeared in the said suit and filed their written statement denying the averments made in

the plaint. They also filed an application under Order VII Rule 11 C.P.C. stating that the suit is hit by principles of *res judicata*, barred by limitation and there is no cause of action for filing of the suit. Learned trial Court dismissed the petition holding that the suit is not hit by principles of *res judicata*, as the earlier suit referred to by the Defendants was decided *ex parte*. Learned appellate Court confirmed the said order holding that the plea of *res judicata* raised by the Defendants can be decided by leading cogent evidence as the Plaintiffs in their plaint have categorically stated that C.S. Plot No.820/1319 over which the Defendants are claiming title by virtue of the decree passed in T.S. No. 185 of 1982 is not the subject matter of dispute in the present suit. It was further held that since the cause of action arose on 17th February, 2009, the suit for declaration of title is maintainable. Learned appellate Court further held that on a plain reading of the plaint, it appears that the Plaintiffs have stated that the cause of action for filing of the suit arose on 17th February, 2009. Hence, the suit is not barred by limitation. Hence, this CMP has been filed.

5. Mr. Mohanty, learned counsel for the Petitioners further submits that the orders passed by the learned trial court as well as revisional court are not sustainable on the ground that both the courts below failed to take into consideration that the land involved in the previous suit, i.e. T.S. No. 185 of 1982, is the subject matter of dispute in the present suit, i.e., C.S. No. 59 of 2009. It is further submitted that the Defendants are in possession over the suit land. Hence, the sale deed on the basis

of which the Plaintiffs claim title over the suit property cannot confer them any right, title and interest and there is no cause of action for filing of the suit. Hence, he prays for setting aside the impugned orders under Annexures-4 and 5 and to remit the matter back to the learned Civil Judge (Senior Division), Jajpur Road for adjudication of the petition under Order VII Rule 11 C.P.C. afresh in accordance with law.

6. Upon hearing learned counsel for the Petitioners and on perusal of the case record, more particularly the impugned orders under Annexures-4 and 5, it is clear that the Plaintiffs at para-7 of the plaint have categorically stated that the subject matter of dispute in T.S. No. 185 of 1982 and the present suit (C.S. No. 59 of 2009-I) are different. It also reveals that the Plaintiffs in their plaint have categorically pleaded that the cause of action for filing of the suit arose on 17th September, 2009 and on different dates. Thus, it prima facie appears that the suit is not barred by limitation and the Plaintiffs have cause of action to file the suit. Law is well settled that a petition under Order VII Rule 11 C.P.C. can only be decided on the averments made in the plaint and not by taking into consideration the averments made in the written statement and other documents.

7. On perusal of the impugned order under Annexure-5, it appears that learned revisional court taking into consideration the contention raised by learned counsel for the parties as well as the case law relied upon, has passed the impugned order. Thus, I find no infirmity in the impugned orders under Annexures-4 and 5. Accordingly, the CMP is dismissed.

8. It is, however, observed that the Petitioners, if so advised, may raise those pleas at the appropriate stage of the suit, which can be considered in accordance with law.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

