

IN THE HIGH COURT AT CALCUTTA

(Civil Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.O. 212 of 2023

Messrs Acme Estate Private Limited

Vs.

Dewanti Rai & Ors.

For the Petitioner

:Mr. Anirudahha Chatterjee, Adv.

Mr. Sounak Bhattacharya, Adv.

Mr. Sib Sankar Das, Adv.

Mr. Sounak Mondal, Adv.

Mr. Abhirup Halder, Adv.

For the Opposite party

:Mr. Debdatta Basu, Adv.

Ms. Pampa Dey (Dhabal), Adv.

Heard on

: May 12, 2023

Judgment on

: June 08, 2023

Bibhas Ranjan De, J.

1. I am dealing with an application under Article 227 of the Constitution of India to adjudicate the legality of the order dated 29.11.2022 passed by the learned Civil Judge (Senior Division), 4th Court at Alipore refusing an application dated 07.11.2022 under Order 7 Rule 11 of Civil Procedure Code with a prayer for rejecting the plaint as well as application dated 14.11.2022 with a prayer for dismissal of the suit, in connection with Title Suit No. 1430 of 2022.

Factual Matrix:-

2. Plaintiff/opposite party filed the Title Suit No.1430 of 2022 for declaration with consequential relief for permanent injunction in respect of subject properties. Predecessor of the husband and brother in laws (proforma defendant nos. 3 to 6) of the plaintiff/opposite party were possessing the subject property uninterruptedly since 1951 and thereby acquired a right of adverse possession. Plaintiff/opposite party being married wife of proforma defendant no. 6 has been residing in the subject property since marriage in the year 1987.
3. Further case of the plaintiff/opposite party is that her husband in collusion with other in laws were trying to hand

over the subject property to the defendant/petitioner. Plaintiff further disclosed that proforma defendant no. 6 i.e. husband of the plaintiff resided in separate room alone and did not look after the plaintiff and her children.

4. That is why plaintiff/opposite party virtually prayed for declaration of title by way of adverse possession along with consequential relief for permanent injunction against the defendant/petitioner from dispossessing the plaintiff/opposite party from the subject property.

Argument:-

5. Learned advocate, Mr. Anirudahha Chatterjee, appearing on behalf of the petitioner/defendant submitted that the plaintiff/opposite party filed an earlier Suit No. 1421/22 before the learned 4th Court (Senior Division) at Alipore against the petitioner/defendant in respect of same cause of action and subject property. Mr. Chatterjee, in support of his contention, drew my attention to the plaint of both the suit i.e. TS. 1421 of 2022 and T.S. 1430 of 2022. It is submitted that plaint of subsequent suit is replica of that of earlier suit. It is further submitted that fact of earlier suit was totally suppressed at the time of filing subsequent one.

6. Learned advocate, Mr. Debdatta Basu, next submitted that the plaintiff/opposite party being married wife of proforma defendant no. 6 cannot claim adverse possession since 1951 while she was married in the year 1987. It is submitted that plaint is liable to be rejected because of illusory prayer of the plaintiff.

7. Per contra, Mr. Basu appearing on behalf of the opposite party/plaintiff contended that the Court in exercising power under Order 7 Rule 11 of the Civil Procedure Code, can only consider the averments of the plaint. In support of his argument ratio deciduous in the case ***P.V. Guru Raj Reddy Vs. P. Neeradha Reddy and others [(2015) 8 Supreme Court Cases 331]*** was relied on.

Decisions:-

8. Argument on the point of suppression of earlier suit, in my opinion, has no bearing with the present issue before this Court in terms of Order 7 Rule 11 of the Code of Civil Procedure. That apart, earlier suit being no. 1421 of 2022 was not at all disposed of on merit but dismissed for non-prosecution.

9. Before entering into the issue raised in the revision application

I should reproduce, in terms of ratio **of P.V. Guru Raj** (supra), the relevant paragraphs of the plaint of this case as follows:-

1). *That in all material times the predecessor of the husband of the plaintiff, Sri Mankeswar Rai, and his other brothers the Proforma Defendants herein and their others family members were the seized and possessed in respect of premises no. 16, Debendra Lal Khan Road, Kilkata-700025 since long.*

2). *That the plaintiff also residing in the said premises since her marriage on 1987 out of the said marriage the Plaintiff gave birth three sons. The plaintiff along with her children is residing in respect of Two Rooms, with kitchen and a privy upon the suit premises without any interference and objection.*

3). *That unfortunately the above named Proforma Defendants in collusion with each other try to handover their possession to the above named A.C.M.E. Estate Pvt. Ltd. Of 69, Ganesh Avenue, Kolkata- 700013, use to approach the plaintiff with a proposal to quit, vacant and deliver up her Khas possession of the said premises to The A.C.M.E Estate Pvt. Ltd. The Defendant nos. 1 herein, as they will develop the said premises, but the plaintiff did not agreed to that.*

4). *That the plaintiff and her erstwhile predecessor enjoy uninterrupted the said plot of land continuously and without any interference since the year 1951 creates adverse possession upon the said land by constructing the structure permanent in nature.*

7). *That the Defendant nos. 6 is the husband of the plaintiff. In spite of living in the same address in separate room alone and do not look after the plaintiff and her children for last few months. It is pertinent to say, the husband of the plaintiff joint hands with the in laws, for which to take opportunity, the other in laws illegally pressurized the plaintiff to quite and vacate from the said room.*

8). That plaintiff further state that knowing fully well that the plaintiff has got lawful right and interest in respect of the suit property, the Defendants in collusion with each other are trying to take forcible possession upon the suit property.

10). That the plaintiff is entitled to get declaration that the plaintiff and her predecessor seized and possessed upon the suit premises in interruptedly and without any objection or interference since 1951 and without knowing the actual owner of the plot of land by which the plaintiff accrued the right of adverse possession in respect of the suit property described in the schedule below.

10. Cause of action is a set of allegation or facts which build up for the ground of filing a civil suit in the Court. Cause of action requires to be explicitly embedded in the plaint, otherwise plaint is liable to be rejected.

11. Relevant paragraphs of the plaint which I have mentioned above specifically disclosed that proforma defendant nos. 3 to 6 (including husband of the plaint) were in adverse possession of the subject property and plaintiff got married with proforma defendant no. 6 in the year 1987 and from then on she was also residing in the house. For reasons plaintiff filed suit claiming declaration on the basis of adverse possession as proforma defendants nos. 3 to 6 in collusion with the petitioner/defendant was trying to dispossess the plaintiff.

12. It is the sole reason why a Civil Suit exists in the first place. It specifies the legal injury which the person who is instituting a suit has suffered. The person instituting such suit needs to disclose contain elements i.e. i) That there existed a right, ii) The occurrence of a breach of that right, iii) the cause of such breach, iv) the damages incurred by the plaintiff. If the plaint does not allege the fact which are required for furthering the claim of the plaintiff, the plaint shall be liable to be rejected.

13. Aforementioned bundle of facts, needless to mention, shall have to be averred in the plaint to show **“cause of action”** for the suit.

14. In this case plaintiff/opposite party claimed title through adverse possession and consequential relief of permanent injunction. According to plaint proforma defendant nos. 3 to 6 (husband and in laws of the plaintiff) were, if at all, in adverse possession of the subject property since 1951 and plaintiff/opposite party got married with proforma defendant no 6 in the year 1987 and from then on plaintiff being married wife of proforma defendant no. 6, was residing in the house belong to proforma defendants. Therefore, plaintiff being

married wife of proforma defendant no. 6 cannot claim any right over the subject property through adverse possession. That apart, as per Hindu Succession Act, plaintiff being a married wife cannot claim any right before death of her husband.

15. Even assuming the right of the plaintiff/opposite party over the property in question, the plaint did not disclose the following facts to show **“cause of action”**:-

- i) who was owner of the property ;
- ii) who is in possession of the title documents;
- iii) the date of entry into possession;
- iv) adverse and hostile possession of the subject property with the knowledge of the true owner of the property.

16. It is trite law that at the threshold of hearing of the suit, rejecting of plaint under Order 7 Rule 11 of the Code of Civil procedure or dismissal of the suit may be considered only after going through the **contents of the plaint** no other document. In this case, seeing the entire contents of the plaint I find hardly any cause of action to file this suit as I am not dealing with any application claiming right to residence under the Domestic Violence Act, 2005. Besides, it is the duty of Court to

stop proceedings and reject the plaint that is of meaningless nature and is filed to waste the time of the judiciary.

- 17.** In the aforesaid view of the matter, the CO No. 212 of 2023 is allowed on contest, thereby setting aside the impugned order and rejecting the plaint of Title Suit No. 1430 of 2022 filed before the Civil Judge (Senior Division), 4th Court at Alipore, District South 24 Parganas. There will be no order as to costs.
- 18.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 19.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]