

04.08.2023
Court No. 19
Item No.13
CP

C.O. 785 of 2023
Nidhi Agarwal & ors.
Vs.
Sri Asit Baran De & ors.

Mr. Shashwat Nayak
Mr. K. N. Jana
...for the petitioners.

Mr. Siva Prosad Ghose
.....for the opposite parties.

The revisional application has been filed by some of the defendants in the suit, challenging an order dated January 20, 2023, passed by the learned Civil Judge, Small Causes Court at Sealdah in Title Suit No. 25 of 2017. By the order impugned, the learned court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure.

The application for rejection of plaint was filed on two grounds, namely, lack of jurisdiction and bar under Section 34 of the Specific Relief Act, 1963, for non-inclusion of a prayer of recovery of possession.

According to the learned court below, the suit would continue before the Provincial Small Causes Court on the strength of the order of transfer of the suit by the learned District Judge in his administrative capacity vide Order No. 196-G dated March 15, 2017.

The issue of jurisdiction of the Provincial Small Causes Court, 1887 to hear suits for declaration and injunction, had come up before this court in the matter of Arati Das & ors vs. Snehasish Das & ors, passed in C.O. 1244 of 2016. On the basis of the ratio of the said judgment, the question of jurisdiction was decided against the defendants.

With regard to the other question of the suit being barred under Section 34 of the Specific Relief Act, the learned court came to a finding that the same was a matter of trial and had to be decided on evidence.

Aggrieved, the defendant nos. 5 to 34 have approached this court by filing an application under Section 227 of the Constitution of India.

Mr. Nayak, learned advocate appearing on behalf of the petitioners, has referred to the Provincial Small Causes Court Act, 1887. According to him, Section 15 read with entry No. 19 of the second Schedule, barred the jurisdiction of the said court. Reliance has been placed on a decision of the Hon'ble Apex Court in the matter of M/s. Patil Automation Private Limited & ors vs. Rakheja Engineers Private Limited, reported in 2022 LiveLaw (SC) 678.

It has been submitted by Mr. Nayak, that the suit could be registered only when the plaint was

presented in the court of proper jurisdiction. It has been further submitted that when the plaint case disclosed dispossession, the prayer for recovery of possession ought to have been included. The plaintiff not having done so, could not maintain the suit and the plaint was liable to be rejected.

Mr. Ghose, learned advocate appearing on behalf of the plaintiff, opposes the submissions of Mr. Nayak. According to him, the suit was originally filed in the court of the learned Civil Judge (Senior Division) at Sealdah which was registered as Title Suit No. 81 of 2015. The same was transferred by the learned District Judge to the present Court vide an administrative order.

Thus, the first contention of Mr. Nayak that the suit could not have been registered unless the plaint was presented in the court of proper jurisdiction has been proved to be incorrect. The decision of the Apex Court in *M/s Patil Automation* (supra) will not be applicable.

The further point of Mr. Nayak that Section 15 of the said Act read with the second Schedule would be a bar on the learned court below to try the suit, is also unacceptable on the ground that the suit had been filed in the court of proper jurisdiction. By an administrative order, the learned District Judge transferred the said suit to the learned court below.

Such administrative decision was not defective and, hence, such transfer was permissible.

In the decision of Arati Das (*supra*), the same point had come up for decision before a Coordinate Bench. The Coordinate Bench held that there was no doubt that the scheme of the Provincial Small Causes Court Act, 1887 barred declaratory suits to be filed and tried by a learned Judge of the Provincial Small Causes Court. However, as the learned Judge had equivalent power with the Civil Judge (Senior Division), the declaratory suit could be tried by the said learned Judge, as the powers were interchangeable.

In the case in hand, the District Judge had assigned the matter to the learned Judge who is trying the suit. Section 13 of the Bengal, Agra and Assam Civil Courts Act, 1887, also permits such assignment of cases or transfer of cases, to the Small Causes Court. Section 13(4) of the Act is relevant:

“13(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.”

The other point raised by Mr. Nayak as to the bar of the suit due to non-compliance of Section 34 of the Specific Relief Act, this court is of the view that such defect is curable and if the defect is not cured,

the plaintiff will suffer for the consequences, but such decision has to be arrived at the final hearing of the suit on evidence. If it is found at the trial that such prayer ought to have been added but was not, the suit may be dismissed. At the stage of deciding an application under Order 7 Rule 11 of the CPC, the question of bar of the suit for non-incorporation of a prayer for recovery of possession in a declaratory suit, was not to be decided, in the facts of this case.

Under such circumstances, the revisional application is disposed of without any interference.

The suit shall proceed in accordance with law and disposed of expeditiously, preferably within six months.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)