

Item No. 15
22.08.2023
Court. No. 19
GB

C.O. 1111 of 2020

Partha Pratim Hazra & Anr.
Vs.
M/s. Mahesh Properties Private Limited

*Mr. A. Chatterjee,
Mr. Rahul Karmakar,
Mr. T. Nag Chowdhury*

...for the Petitioners.

*Mr. Dayashankar Mishra,
Mr. Dhiraj Trivedi,
Mr. Sushil Kumar Mishra,
Mr. Shailendra Kr. Mishra,
Ms. Sabnam Laskar,
Mr. Sunil Gupta*

...for the Opposite Party.

The petitioners are aggrieved by an order dated February 25, 2020, passed by the learned Judge, 2nd Bench, Presidency Small Causes Court at Calcutta, in Ejectment Suit No.503 of 2016. By the order impugned, the learned court below rejected an application filed under Order 7, Rule 11 of the Code of Civil Procedure.

According to Mr. Chatterjee, learned advocate for the petitioners, the suit for recovery of possession, mesne profit, etc., was not maintainable and the plaint was liable to be rejected. The predecessor-in-interest of the defendants were already lessees in respect of the suit premises, prior to induction of the plaintiff as a lessee in the property in question.

In such view of the matter, the plaintiff did not have a superior title over the defendants. The plaintiff came into the scene after the lease deed had already been executed with the defendants. The plaint indicated that the plaintiff was

inducted sometime in November 19, 1979 whereas, the defendants claim to have been inducted before that and the said fact has been admitted in the plaint.

According to Mr. Chatterjee, the plaint should be rejected as the suit was hit by the doctrine of concurrent lease.

Mr. Trivedi, learned advocate appearing on behalf of the plaintiff submits that the plaint could not be rejected. Upon a meaningful reading of the plaint it would not appear that the suit was barred by law. The documents relied upon by the defendants could not be looked into at the stage of rejection of the plaint. In an earlier suit, the point raised by Mr. Chatterjee with regard to the plea of concurrent lease had been rejected. Such decision was upheld by the High Court.

Although, Mr. Chatterjee disputes such submission of Mr. Trivedi, such issues are not required to be gone into by this Court while deciding whether the learned trial judge was right in rejecting the application under Order 7, Rule 11 of the Code of Civil Procedure.

The learned court found that the plaintiff's case was based on a registered deed of lease dated November 19, 1979, executed by Sekhar Chandra Law in favour of the plaintiff in respect of the entire premises. That the predecessor-in-interest of the defendants were lessees in respect of the suit property, but the plaintiff claimed to be the superior landlords with superior title and filed the suit for recovery of khas possession against the defendants.

From a meaningful reading of the plaint, this Court does not find that the suit is ex facie barred by law. The cause of action has also been pleaded. The learned court below came to the finding that the question as to whether the plaintiff had a right to file the suit for eviction and whether there was a relationship of landlord and tenant, were issues to be decided at the trial and could not be decided at the stage of adjudication of an application under Order 7, Rule 11(d) of the Code of Civil Procedure.

This Court does not find any irregularity in the order impugned. The plaint case has been run on the basis that the plaintiff had a right to recover the premises from the petitioners on the ground that the plaintiff having a superior title, than that of the petitioners.

The learned court rightly rejected the application. However, the issue is kept open to be decided at the appropriate stage in the suit.

It is directed that the application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 be disposed of within a period of two months from the next date fixed.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)