

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No.978 of 2022

Sri Jai Prakash Sinha
Vs
Sri Uma Shankar Sinha & Ors.

For the Petitioner : Mr. Rajdeep Bhattacharya, Adv.

For the O.Ps. 1& 2 : Mr. Rajdeep Mantha, Adv.

: Mr. Anirudhya Dutta, Adv.

: Mr. Sikhar Singh, Adv.

Last Heard on: : 20.01.2023

Judgment on: : 31.01.2023

Partha Sarathi Sen, J. : –

1. In this revisional application under Article 227 of the Constitution of India the order dated 14.03.2022 as passed in Title Suit no.286 of 2019 by the learned Civil Judge, Senior Div., 4th Court Alipore, has been assailed.

2. By the impugned order learned trial court has been pleased to reject the petition dated 7.7.2021 as filed by defendant no.1 under the provisions of order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint. The defendant no.1 felt aggrieved and thus preferred the instant revisional application.

3. In support of the instant revisional application learned advocate for the defendant no.1/revisionist at the very outset draws attention of this Court to

the copy plaint as filed in Title Suit no.286 of 2019, copy of the written statement as filed by the defendant no.1, the copy of the petition under Order VII Rule 11 of the Code of Civil Procedure, the photo copy of the deed of conveyance dated 26th March, 2014 as executed by M/S Dakshinee Cooperative Housing Estate Ltd., in favour of Jai Prakash Sinha and the impugned order. Attention of this court is also drawn to the provision of Section 102 of the West Bengal Cooperative Societies Act, 2006.

4. It is submitted on behalf of the revisionist/defendant no.1 that on perusal of the aforesaid deed of conveyance dated 26th March, 2014 vis-a-vis the plaint as filed by the opposite parties before the learned trial court it would reveal that the parties to the said suit are the members of the aforementioned Cooperative Society and not the exclusive owners of the suit property. It is submitted that such being the position the dispute between the parties to the said suit with regard to the suit property comes under the purview of definition 'dispute' under Section 4(25) of the said Act and thus, the same is got to be settled not by a civil court but by the Registrar in view of the provision of Sections 102(2) and (4) of the said Act. It is thus contended that learned trial court while passing the impugned order failed to visualize the relevant provisions of the aforesaid Act and thus passed the impugned order which is not justified in the eye of law.

5. Per contra learned advocate for the plaintiffs/opposite parties however contended that since the subject matter of dispute before the learned trial court is within the siblings in respect of the suit property, it is preposterous to

suggest that learned trial court has no jurisdiction to try the said suit for declaration, partition, permanent injunction and for other ancillary reliefs as prayed for before the learned trial court. It is thus submitted that it is a fit case for dismissal of the instant revisional application.

6. In considered view of this Court for effective adjudication of the instant revisional application, a look to the provision of Section 4 (25) and Section 102 is necessary.

Section 4(25) of the said Act is as under:-

““dispute” means any matter capable of being the subject of civil litigation, and includes a claim in respect of any sum payable to or by a Co-operative society:”

Section 102 of the said Act is as under:-

“Disputes to be filed before Registrar:- (1) Any dispute concerning the management or business or affairs of Co-operative society as and when such election is conducted by the Co-operative Election Commission and disciplinary action taken by Co-operative society against its paid employees regarding the terms and conditions of the service shall be filed before the Registrar for settlement if it arises:-

(a) Among the members, past members and persons claiming through members and deceased members or then sureties; or

(b) Between member, past member or a person claiming through a member, past member or deceased member representing through heirs or legal representatives and the Co-operative society , its board or any officer, agent or employees of the Co-operative society or liquidator, past or present; or

(c) ...

(d) ...

(2) Any dispute mentioned in sub-section(1) other than a dispute relating to recovery of money shall be filed before the Registrar within three months from the date on which the cause of action arises.

(3)....

(4) Any Civil Court or any consumers’ Dispute Redressal Forum shall not have any jurisdiction to try any dispute as mentioned in sub-section (1) .

(5).....”

7. Keeping in mind the aforesaid legislative provisions this court shall make an endeavour to come to a logical conclusion as to whether the dispute as involved in Title Suit no.286 of 2019 comes under the purview of the said Act or not. On perusal of the averments of the plaint, it reveals that originally the aforementioned society was the owner of 25 bigas 6 katas 11 chitaks 31 sq. ft of land of which the suit property is a part and parcel thereof. It is the further plaint case that after preparing a master plan, after making development and demarcation over the said plot of land, the suit plot i.e plot no.143 was allocated in favour of Ram Shankar Sinha who in turn with the Board resolution of the Society transferred the allotment of the said plot in the name of Satya Narayan Sinha (since deceased) being the predecessor-in-interest of the parties to the instant lis. On perusal of the aforesaid deed dated 26.03.2014 it reveals that the suit plot of land was allotted by the said society to the transferee as a member of the society and therefore sufficient prima facie materials have been placed before this Court that the suit property has not been transferred to its member as a free hold land by way of outright sale and on the contrary the same has been transferred in his name by way of allotment and thus the allottee remains the member of the said society. Such being the position there is no hesitation in the mind of this Court that when a dispute arises with regard to the suit property which has been allotted to a member of a society or in other words; if any dispute arises with regard to such allotted property, such dispute ought to have come within the meaning of Section 4 (25)

of the said Act and in view of the provision of Section 102 (4) of the said Act, Civil Court has got no jurisdiction to try such dispute.

8. In view of the discussion made hereinabove the present revisional application succeeds. The impugned order dated 14.03.2022 as passed in Title Suit no.286 of 2019 by the learned Civil Judge, Senior Div., 4th Court Alipore is hereby set aside.

9. Consequently the petition under Order VII Rule 11 of the Code of Civil Procedure dated 07.07.2021 as filed by the defendant no.1 in Title Suit no.286 of 2019 in the Court of learned Civil Judge, Senior Div., 4th Court Alipore stands hereby allowed. Consequently the plaint as filed in Title Suit no.286 of 2019 in the court of learned Civil Judge, Senior Div., 4th Court Alipore stands hereby rejected. With the aforementioned observation the instant revisional application stands hereby disposed of.

10. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)