

Item No. 11
07.08.2023
Court. No. 19
GB

C.O. 1081 of 2023

Sri Subhash Chandra Basu
Vs.
Sri Paritosh Saha

Mr. Gopal Ch. Ghosh,
Mr. Pankaj Halder

... for the Petitioner.

Mr. Arnab Mukherjee

... for the Opposite Party.

The revisional application has been filed challenging an order dated January 16, 2023 passed in Title Suit No.236 of 2021 by the learned Civil Judge (Junior Division), 3rd Court at Howrah.

By the order impugned, the learned court below rejected an application under Order 7, Rule 11(d) of the Code of Civil Procedure, filed by the defendant. The defendant in the suit alleged that the suit did not disclose the complete cause of action. An earlier suit which was dismissed for default and the proceedings before the learned Thika Controller, had not been disclosed in the plaint.

The learned trial judge held that apart from the plaint and averment made therein, the court was debarred from looking into any pleading or submission of the defendant. The plaint read as a whole, disclosed a cause of action and hence, the application under Order 7, Rule 11(d) of the Code of Civil Procedure was rejected. Aggrieved, the petitioner/defendant is before this Court.

The law is well-settled that an application under Order 7, Rule 11 of the Code of Civil Procedure, must be disposed of

on the basis of the pleadings in the plaint and the documents relied upon in the plaint. The contentions of the defendant either in the written statement or in the application under Order 7, Rule 11 of the Code of Civil Procedure were not to be looked into. The decision of ***Bhagirath Prasad Singh versus Ram Narayan Rai & Anr.*** reported in ***AIR 2010 Patna 189***, does not apply in this case.

The decision of the Hon'ble Apex Court in ***Dahiben versus Arvindbhai Kalyanji Bhanusali*** reported in ***(2017) SC 366*** also does not apply to the facts of this case. In the said case, the learned trial court and the High Court found that the plaintiff while challenging a deed of sale, had intentionally suppressed the date of execution of such deed. Thus, the cause of action was found to be incomplete and the suppression of the date of sale was intentional and in order to avoid limitation. The facts of this case are completely different.

Perusing the plaint as a whole, it appears that the plaintiff filed Title Suit No.236 of 2021 before the learned Civil Judge (Junior Division), 3rd Court at Howrah, inter alia, stating that the plaintiff was a tenant in respect of one shop room at 86 Sadar Baxi Lane. The plaintiff was running a grocery shop. One Manoranjan Basu (since deceased) had inducted the plaintiff as a tenant 40 years ago. After the death of Manoranjan Basu, who died as a bachelor, his brother Surendra Nath Basu became the owner. Surendra Nath Basu had four sons. Subhash Chandra Basu one of the sons was realizing the rent. Rent was paid upto June 2010.

Thereafter, the defendant refused to accept the rents. The defendant was of dangerous nature and tried to evict the plaintiff without following the due process of law. That the defendant did not have any right to terminate the tenancy. On February 20, 2021, the defendant and his men and agents went to the suit property, hurled stones and bricks at the shop room. The tile shed was damaged. That the cause of action arose on February 20, 2021 in the suit property. Paragraphs 14 and 22 of the plaint disclose a cause of action. Whether the same is partial or complete or the plaint suffers from suppression of fact, cannot be decided at the stage of hearing of an application under 7, Rule 11 of the Code of Civil Procedure.

Reference is made to decision of ***G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.*** decided in ***Civil Appeal No.- 2737 of 2023***. The Hon'ble Apex Court held as follows:-

“6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and

have come to the conclusion that the plaint does not disclose cause of action.

8. The learned counsel appearing for the second and third respondents vehemently submitted that on a plain reading of the plaint, it is crystal clear that cause of action is not disclosed. Therefore, we have perused the plaint. After having perused the plaint and in particular paragraphs 16 and 17, we find that the cause of action for filing the suit has been pleaded in some detail. It is pleaded how the first appellant acquired title to the property. The facts constituting alleged cause of action have been also incorporated in paragraph 17.

9. We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter.”

In the decision of ***Kamala and ors. v. K.T. Eshwara Sa and ors.***, reported in **(2008) 12 SCC 661**, the Hon’ble Apex Court held as follows:-

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

The contention of Mr. Ghosh that the complete cause of action was not mentioned and there has been suppression of material facts, is not evident from the plaint case. The contention of the defendant in the application under Order 7, Rule 11 of the Code, cannot be looked into. Hence, this Court is of the view that at this stage, the learned court below rightly rejected the application.

It is submitted that the application under Order 14, Rule 2 of the Code is still pending. The said application shall be disposed of on its own merits and in accordance with law within a period of two months from the next date fixed.

This Court has not gone into the merits of the said application and this order shall not be construed as an opinion of the Court about the maintainability of the said application.

Accordingly, the revisional application is disposed of.

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

(Shampa Sarkar, J.)