

27.04.2023
Ct. no.654
Item no.3
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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

**C.O. 1385 of 2022
Poly Debroy
Vs.
Arati Pandit**

Mr. Shyamal Kumar Das
Mr. Sarada Prasad Roy
Ms. Krishna Yadav
..for the petitioner

Mr. Kushal Chatterjee
Mr. Debrup Chowdhury
..for the opposite party

This is an application under Article 227 of the Constitution of India challenging the order dated 31st March, 2022 passed by the learned Civil Judge(Junior Division), Bidhan Nagar in Title Suit No.176 of 2019 rejecting the application of the defendant under Order VII Rule 11 of the Code of Civil Procedure filed for rejection of the plaint.

The brief fact of the case is that the plaintiff filed a suit for eviction of wrongful occupier and recovery of *khas* possession, which is registered as Title Suit No.176 of 2019. In the said suit, the defendant filed an application for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code. Upon hearing, the learned trial court rejected the aforesaid application. Hence, this revision.

Mr. Shyamal Kumar Das, learned advocate for the petitioner submits that the suit filed by the plaintiff is undervalued. Therefore, the learned trial court ought to have rejected the plaint since the subject matter of the suit is valued more than Rs.2,50,000/-. In support of his contention, he relies on the decision of this Court passed in the matter of **Smt. Nilima Bose Versus Santosh Kumar Ghosh**, reported in **AIR 1997 Cal 202**. He submits for rejection of the plaint by setting aside the order of the learned trial court.

In reply to the contention raised on behalf of the petitioner, Mr. Kushal Chatterjee, learned advocate for the opposite party referring to Section 7(vi)(a) of the West Bengal Court Fees Act, 1970 submits that since the plaintiff has sought for eviction of wrongful occupier and recovery of *khas* possession and has not prayed for declaration of title, hence the plaintiff has the choice to value the suit on the basis of valuation of the relief claimed in the suit. To buttress his contention, he relies on the decision of this Court passed in **Arobindo Saha & Ors. Versus Nowser Ali Khan** reported in **2015 SCC Online Cal 8343**. He further submits that Section 11 of the Act empowers the Court to hold enquiry, if the suit is incorrectly valued. Thus, the issue raised

by the petitioner is short of merit and is liable to be dismissed.

Having heard the learned advocates for respective parties, it is found that the only ground raised by the defendant-petitioner for rejection of plaint is that the suit is undervalued.

Before delving into the merit of this application, it would be profitable to refer to the relevant provision under Order VII Rule 11 of the Civil Procedure Code which is reproduced hereunder:

“11. Rejection of plaint.—*The plaint shall be rejected in the following cases:—*

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails comply with the provision of Rule 9; . . .”*

In considering an application under Order VII Rule 11 of the Civil Procedure Code, the only restriction is that the consideration of the application for rejection should not be on the basis of the

allegations made by the defendant in his written statement or on the basis of allegations in the application for rejection of the plaint. The Court is to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order VII Rule 11 (a) to (f), the same has to be rejected.

Bearing in mind the aforesaid principle, I now proceed to decide the issue raised in the present application.

Upon perusal of the plaint, it is found that the plaintiff has filed a suit for eviction of wrongful occupier and recovery of *khas* possession. It is relevant to note that the plaintiff has not sought for declaration of title. In order to appreciate the contention of learned advocate for the petitioner, it would be appropriate to refer to Section 7(vi)(a) which is reproduced hereunder.

“a trespasser, where no declaration of title to property is either prayed for or necessary for disposal of the suit- according to the amount at which the relief sought is valued in the plaint subject to the provisions of Section 11”.

This Court while dealing with provision of Section 7(vi)(a) of the Act observed as follows in *Arobindo Saha (Supra)*:

“9. Section 7(vi)(a) of West Bengal Court Fees Act, 1970 thus makes it clear that if possession from a trespasser is sought to be recovered on the basis of

declaration of title of the plaintiff, then the plaintiff is required to value the suit on the basis of the actual market price of the suit property and he is also required to pay ad valorem court fees on the valuation of the suit property.

10. *The said provision thus makes it clear that if the plaintiff files a suit for recovery of possession from a trespasser without seeking any declaration of his title in the property or in a case where grant of relief prayed for by the plaintiff is not dependent upon declaration of his title in the suit, then the plaintiff is not required to value the suit on the basis of the actual market price of the suit property. Under such circumstances, he can value the suit on the basis of the valuation of the relief claimed in the suit.”*

Bearing in mind the aforesaid and following the observations in *Arobindo Saha (Supra)*, since the plaintiff has not sought for declaration of title, hence the plaintiff is not required to value suit on the basis of the actual market price of the suit property. In *Smt. Nilima Bose (Supra)* cited on behalf of the petitioner, it is found that in the said case the plaintiff-petitioner prayed for declaration of title, which is factually distinguishable from the case at hand. Therefore, the argument advanced on behalf of the petitioner does not hold good.

In view of the above, the order passed by the learned trial court does not call for interference.

The revisional application being **C.O. 1385 of 2022** stands dismissed. The impugned order under challenge of learned Trial Court is affirmed.

All connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)