

28.08.2023
Court No. 19
Item no.04
CP

C.O. No. 1344 of 2023
Salkia Vivekananda Sporting Club
Versus
Bankey Lal Jaiswal

Ms. Shebatee Datta
Ms. Babita Dey
....for the petitioner.

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal
.....for the opposite party.

This revisional application arises out of an order dated March 1, 2023, passed by the learned civil Judge (Junior Division), 5th Court, Howrah in Title Suit No. 1233 of 2022. By the order impugned, the application under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendant was rejected.

The grounds for rejection of the plaint were as follows:

- a) As the plaintiff had pleaded that the defendant with their men and agents had forcibly blocked the entrance of the plaintiff's property by stacking building materials, the suit for declaration without a prayer for recovery of possession was barred under Section 34 of the Specific Relief Act.
- b) That the suit was also barred under Section 19 of the West Bengal Societies Registration Act, 1961.

The learned court below held that on a careful reading of the plaint, the suit did not apparently appear to be barred either under Section 34 of the Specific Relief Act or under the Societies Registration Act. For the court to come to a conclusion that the prayer for recovery of possession was essential or else the suit would fail, a trial was necessary upon consideration of the evidence.

Referring to a decision of the Hon'ble Apex Court in the matter of Gurdev Singh vs. Harvinder Singh of the Hon'ble Apex Court, the learned court below held that the plaint could not be rejected.

Dealing with Section 19 of the West Bengal Societies Registration Act, 1961, the court held that the suit had been properly framed and the club, represented by the Secretary was properly impleaded. That it was sufficient to sue the club through its Secretary which was a society under the Societies Registration Act and all members were not required to be impleaded as parties.

Moreover, the court held that the name of the defendant could be rectified at any stage and an application under Order 6 Rule 17 of the Code of Civil Procedure was also pending.

Ms. Datta, learned advocate for the petitioner submits that paragraphs 7, 8, 10 and the documents annexed to the plaint, namely, the complaint before

the police authorities and the Howrah Municipal Corporation would indicate that the plaintiff had alleged dispossession. The prayer for declaration simpliciter, without a prayer for recovery of possession could not be allowed by the court. Hence, the plaint should be rejected.

Coming to the averments in paragraphs 7, 8, 10 and 12 of the plaint, it appears that the plaintiff has urged that the defendant and its men and agents were forcibly trying to raise an illegal construction on the plaintiff's land by encroaching the same and they had also blocked the entrance by stacking building materials. That the defendant was trying to disturb the peaceful possession of the plaintiff in respect of the suit property. That the defendant continuously threatened the plaintiff with dire consequences. That a proceeding under Section 144 (2) of the Code of Civil Procedure had been instituted.

A meaningful reading of the plaint indicates that the plaintiff has contended that the defendant was trying to dispossess the plaintiff by encroaching into the property. Thus, it does not appear from the plaint that the plaintiff has averred either complete or partial dispossession. At this stage, whether the prayer for recovery of possession ought to have been made or not, cannot be decided.

While deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, the averments in the plaint are to be taken as true and correct. Nothing can be subtracted from or added to the same. The plaint as a whole, discloses attempts to dispossess the plaintiff by blocking the entrance, but there is nothing to show that there has been dispossession. Moreover, the cause of action as per the pleadings arose sometime in August, 2022. The complaint to the police authorities and the municipal authorities indicate that the alleged illegal activities of the defendant started on and from July, 2022. Thus, the prayer for recovery of possession is still available to the plaintiff and can be incorporated by an amendment if so required.

Whether the suit will fail on account of such prayer not having been made, is a matter of trial and the plaint should not be rejected. At this stage, the averments in the plaint do not indicate that the suit is barred by law or is hit by the proviso to Section 34 of the Specific Relief Act.

The decision cited in ***Sayyed Ayaz Ali vs Prakash G. Goyal and Others*** reported in **(2021) SCC 456** does not apply in the facts of this case. The Hon'ble Supreme Court held that once the plaint was rejected, liberty could not be given to amend the

plaint. The revisional application is accordingly dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)