

01.06.2023
Sl.No.2
Ct.5/ sn

C.O.1429 of 2023

Ranjit Mondal & Ors.
Vs.
Madhai Chandra Manna & Ors.

Mr. Debjit Mukherjee
Mr. Suvadeep Sen ..for the petitioner

Learned advocate for the petitioners is present.

Heard learned advocate for the petitioners.

This application is directed against the order dated 13th April, 2023 passed by the learned Civil Judge(Junior Division), 1st Court at Howrah in Title Suit No.132 of 1997. The petitioners being aggrieved by the said order has come up with the instant application.

It was the contention of the petitioners before the learned Court below that the suit is not maintainable as from the documents filed by the plaintiff being registered deed of settlement dated 6th April, 1990 banking upon the prayer for declaration of ownership of the plaintiff it goes to show that the father of the plaintiff has already revoked the registered deed of settlement. Learned advocate for the petitioners draws the attention of pages 30 and 31 of the revisional application. Learned advocate submits that the document goes to show that the suit is not maintainable. Learned advocate further submits that the learned Trial Judge has not

considered the petition under Order 7 Rule 11(a) of the Code of Civil Procedure and have not assigned any reason while rejecting the prayer of the defendant no.1/petitioners.

Upon hearing the learned advocate for the petitioners and upon perusing the materials on record, this Court is of the view that in order to decide as to whether the learned Trial Court has erred in rejecting the application under Order 7 Rule 11(a) of the Code of Civil Procedure. It is necessary to consider the said provision. Order 7 Rule 11(a) of the Code of Civil Procedure which is as follows:

“11. Rejection of plaint

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;”

Thus, upon plain reading of the provision of the Order 7 Rule 11(a) of the Code of Civil Procedure, it appears that the Court is empowered to reject the plaint when the plaint does not disclose cause of action and not that the suit is not maintainable. As maintainability is mixed question of law and fact the question of maintainability cannot be decided in an application under Order 7 Rule 11(a) of the Code of Civil Procedure.

Upon perusing the order of the learned Trial Court, it appears that the learned Trial Court has observed that the declaration of the plea of the defendant requires consideration of pleadings the issues and other materials on record but such plea is beyond the scope of Order 7 Rule 11(a) of the Code of Civil Procedure where the only statement in the plaint will have to be perused. Learned Trial Court has also relied upon the judicial decision in this regard. As in the application under Order 7 Rule 11(a) of the Code of Civil Procedure, the Court is required to give elaborate reasons, I do not find any error in the observations of the learned Trial Court. Thus, this revisional application stands disposed of.

However, as the issue of maintainability of the suit is raised, the petitioners/defendant no.1 is granted liberty to raise the issue of maintainability before the learned Trial Court and if such issue is raised the learned Trial Court shall decide the same as a preliminary issue and dispose of the same within a period of four months from the next date fixed.

It is however made clear that this Court has not gone into the merits of this case.

Urgent Photostat copy of the order be made available, if applied for, upon compliance with requisite formalities.

(Biswaroop Chowdhury, J.)