

Item No. 3
13.10.2023
Court. No. 19
GB

C.O. 1464 of 2023

Probuddha Bharat
Vs.
Goutam Singharoy & Ors.

Mr. Partha Pratim Roy

...for the Petitioner.

Mr. Angshuman Chakraborty

...for the Opposite Party No.1.

The revisional application arises out of an order dated March 31, 2023 passed by the learned Civil Judge (Senior Division), 2nd Court at Chinsurah, Hooghly in Title Suit No.37 of 2022.

By the order impugned, the learned court below rejected an application filed by the petitioner/defendant no.5 under Order 7 Rule 11 of the Code of Civil Procedure.

In the application for rejection, the petitioner, inter alia, stated that prayers (a) and (b) were barred by the laws of limitation. Without pleading the date of knowledge of the gift deeds of 2005 and 2011 in the body of the plaint, the petitioner could not have challenged the said deeds. The deeds should have been challenged within three years from the date of knowledge. By clever drafting, the plaintiff avoided to mention the date in order to bypass the operation of the laws of limitation.

It is further stated that the other prayers with regard to the Schedule 'D', 'E' and 'F' were dependent on the gift deeds of 2005 and 2011. If the challenge to the deeds of 2005 and 2011 fail, consequently all the reliefs claimed in the

plaint must fail. Thus, the suit should be nipped at the bud as unnecessary continuation of the suit, which was not maintainable in law, would result in wastage of judicial time. Paragraphs 19, 20 and 21 of the plaint have been placed in great detail. The cause of action, as pleaded, arose on May 30, 2005. Mr. Roy contends that the said cause of action was illusory. In the absence of any pleading with regard to the date of knowledge of the impugned deeds, it should be taken that the plaintiff all along had knowledge of the said deeds, but had consciously omitted the date. The right to sue accrued when the deeds were executed but the plaintiff having failed to challenge the same within the period of limitation and also not having prayed for cancellation of the said deeds, could not maintain the suit in its present form. Mr. Roy further submits that the properties described in 'B' and 'C' which were transferred by the deeds of gift comprised of the 'A' schedule property. Thus, the prayer for partition of the property was also not available.

Mr. Chakraborty, learned advocate appearing on behalf of the opposite party no.1/plaintiff submits that the prayers with regard to 'D', 'E' and 'F' schedule property, are available and 'D' schedule property was transferred by a deed of gift of 2021. The said deed has also been challenged and the challenge to the said deed is not barred by limitation. It is further submitted that at the stage of rejection of the plaint, the court was required to see two things, first, whether the plaint disclosed a cause of action and secondly, whether the suit was barred by law. The plaintiff has filed the suit for

declaration, partition and permanent injunction against his stepmother and stepsisters.

According to the plaintiff, the stepmother, by using undue influence got some properties transferred in her name on the basis of impugned deeds of 2005 and 2011 which were neither disclosed nor acted upon. Even after the alleged deeds were executed, the properties continued to be joint properties and were in possession of the plaintiff. Thus, a prayer has been made for declaration with regard to the deeds of 2005 and 2011 to be void and not having been acted upon. Further declaration that the deed of gift of 2021 was also void and not acted upon and the defendant no.5 did not acquire any right, title and interest in respect of the said property have been prayed for.

According to the plaintiff, he had 1/5th share in the entire property of the father and the entire property has been mentioned as schedule 'A' in the plaint.

Heard the learned advocate for the respective parties. Cause of action is a bundle of facts. The suit is based on alleged illegal deprivation of the petitioner from his legitimate 1/5th share in the property of his father by the stepmother and stepsisters who had obtained the property from the erstwhile owner by getting him to execute some deeds of gift upon taking advantage of his old and ailing condition and specially when he was not in a proper mental state of mind.

Upon a meaningful reading of the plaint, it appears that the cause of action as pleaded cannot be negated at a

very nascent stage of the suit. Paragraph 32 is not the only pleading which is to be looked into by the court while deciding the cause of action. Although, the plaintiff has stated that the cause of action arose on 2005, he has also stated that the cause of action was aggravated when the transfer of 2021 took place.

Even accepting Mr. Roy's contention that prayers (a) and (b) are not available to the plaintiff, it appears from a bare reading of the plaint and the prayers that the other prayers are not barred by limitation. Secondly, limitation is a mixed question of law and fact. Whether by deed of gift of 2021, the defendant no.5/petitioner acquired right, title and interest in respect of the entire 'A' schedule property, has to be decided on evidence.

Mr. Roy submits that the entitlement of the plaintiff to get 1/5th share in the 'A' schedule property would be subject to cancellation of the deeds of gift, which were executed in 2005 and 2011. Whether the deed of 2021 involve the self-same properties pertaining to deed of 2005 and 2011 are matters of evidence.

For the court to arrive at such a finding, evidence is to be led. No documents have been filed with the plaint which would enable the court to decide the point raised by Mr. Roy at this stage. While deciding an application for rejection of the plaint, the court can look into the averments in the plaint and the documents filed with the plaint. The contentions of the defendants cannot be looked into.

Reference is made to the decision in ***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.”

Under such circumstances, unless the deeds are tendered in evidence and the suit is finally heard and disposed of, it would not be proper to reject the plaint as it stands now. Moreover, the law is well-settled that if the plaint case is weak and may ultimately result in dismissal of the suit, even then, the plaint should not be rejected. Secondly, it is also well-settled that in case of multiple reliefs claimed in the suit, if some of the reliefs appear to be available, the suit should be heard. The plaint should not be rejected and all the issues must be tried as a whole.

In the matter of ***Sri Biswanath Banik and Anr. vs Sulanga Bose and Others*** reported in ***(2022) 7 SCC 731*** and ***Jageshwari Devi and Others vs Shatrughan Ram*** reported in ***(2007) 15 SCC 52***, in support of the proposition that if the reliefs were interconnected, provisions of Order 7 Rule 11 would not have any application. The suit should go to trial as a whole.

Finally, if there is any doubt as to whether the plaint should be rejected or not, the benefit of doubt should be given to the plaintiff.

In the decision of ***Jageshwari Devi and ors. vs. Shatrughan Ram reported in (2007) 15 SCC 52***, the Hon’ble Apex Court held as follows:-

“**3.** We have heard learned counsel for the parties. We have perused the order of the trial court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) CPC. The trial court on consideration of the averments in the plaint held, and in our view rightly, that it could not be held that the plaint does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order 7 Rule 11 CPC no exception can be taken to the order.”

Under such circumstances, the revisional application fails. The learned court below shall frame issues with regard to the points raised in the application under Order 7 Rule 11 of the Code of Civil Procedure and proceed with the disposal of the suit. The findings of this Court and the order passed by the learned court below while rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure, shall not influence the adjudication of the suit.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)