

Court No. 652

CO 2292 of 2019

16.03.2023

(AD 14)

(S. Banerjee)

Gatik Builders Pvt Ltd.

Vs.

Ranajit Kumar Mondal & Ors.

with

CAN 1 of 2019

(Old CAN 8757 of 2019)

CAN 2 of 2021

CAN 3 of 2021

Mr. Saptangshu Basu, Sr. Advocate

Mr. Anirban Ray

Mr. Debraj Sahu

Mr. Snehashis Sen

... for the petitioner

Mr. Gopal Chandra Ghosh

Mr. Rajkrishna Mondal

... for the opposite party

Being aggrieved and dissatisfied with the order dated January 3, 2019 passed by the learned Civil Judge (Junior Division), 6th Court at Alipore in Title Suit No. 461 of 2018 present application under Article 227 of the Constitution of India has been preferred.

Petitioner contended that the opposite party herein as plaintiff has instituted aforesaid suit against the petitioner and the proforma opposite parties claiming diverse reliefs including decree of declaration to the effect that the plaintiff/opposite party is the owner of the suit property. The plaintiff's allegation in the said suit are all untrue and incorrect. The defendant/petitioner herein took out an application

under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure in the said suit praying inter alia for rejection of the plaint and/or dismissal of the suit. In the said application petitioner contended that the suit is not maintainable under Section 51C of the West Bengal Land Reforms Act, 1955 and they have specifically contended that the plaintiff had approached the wrong forum for redressal of his grievances.

Opposite party no. 2 herein has opposed the said application and learned court below upon hearing rival contentions was pleased to dismiss the said application filed under Order VII, Rule 11 of the Code by the impugned order dated 3rd January, 2019.

Mr. Saptangshu Basu, learned senior counsel appearing on behalf of the petitioner, submits that a meaningful reading of the contents of the plaint clearly suggests that the suit is barred under Section 51C of the Act of 1955. By a clever drafting the plaintiff wanted to establish his title claiming that the entry in record of rights is erroneous. In this context he has pointed out the cause of action of the suit as has been stated in paragraph 13 of the plaint read with paragraphs 10 and 11 of the plaint. He contended that the plaintiff has specifically stated that being aggrieved and dissatisfied with the order by the BL and LRO dated 08.03.2018 he preferred an application before LRTT and his cause of

action of the present suit arose on and from 08.03.2018 on which date the concerned B.L.& L.R.O. observed that R.S. RoR does not reflect the name of the plaintiff's predecessor and that defendants got the suit plot no. 183 by way of exchange and plaintiffs got plot no. 128 by way of exchange against that plot no. 183. Accordingly Mr. Basu submits that plaintiff's cause of action arose due to the order passed by BL and LRO on 08.03.2018 and the said order has also been challenged before the LRTT which is pending before the said forum and as such civil court has no jurisdiction to try and dispose of the said issue. Referring a judgement in the case of Nema Chandra Kundu –Vs.- Kalyan Das & Ors., reported in 2018 SCC OnLine Cal 14050, he contended that the relief claimed in this suit is practically for correction of the record of rights along with a prayer for declaration of title. Such suit is not maintainable in a civil court of law under Section 9 of the Code of Civil Procedure. In this context he also relied upon the judgement in the case of T. Arivandandam –Vs.- T. V. Satyapal & Anr., reported in (1977) 4 SCC 467. He further submitted that the court below ought to have appreciated that the plaint itself ex facie barred by limitation and has failed to exercise the jurisdiction vested in him and should have appreciated that the plaintiff had approached before a wrong forum to agitate his grievances by deliberately undervaluing the reliefs

claimed. Accordingly he has prayed for setting aside the order impugned.

Learned counsel for the opposite party Mr. Gopal Chandra Ghosh has pointed out different paragraphs of the plaint and contended that the dispute is purely civil in nature and no relief has been claimed in the plaint which is barred under Section 51C of the West Bengal Land Reforms Act, 1955 and as such the court below has rightly rejected the defendant's prayer for rejection of the plaint and in this context he relied upon paragraph 16 of the judgement in the case of Om Agarwal -Vs.- Haryana Financial Corporation & Ors., reported in (2015) 4 SCC 371.

Considered the submissions made by both the parties.

It is settled proposition of law that while deciding a question under Order VII Rule 11 of the Code of Civil Procedure, only the averments made in the plaint are relevant. On perusal of the recital of the plaint it appears that plaintiff's case is that the schedule mentioned plot No. 183 measuring 0.16 decimal of Sali land, originally belonged to their predecessor Nagendra Nath Mondal since deceased, and his name was duly recorded in CS and RS record of rights. The said Nagendra Nath Mondal who had acquired the said land by way of inheritance had paid taxes to the Government

of West Bengal and was in possession and occupation of the said suit land. It is further case of the plaintiff that said Nagendra Nath Mondal during his lifetime had executed registered deed of family settlement on 22.01.1975 in favour of his four sons out of which one son is the original plaintiff herein, namely Rajani Kanta Mondal, since deceased. Accordingly the plaintiffs got the suit property as described in the 'Ka' schedule by way of that family settlement and as a last item of the family settlement the suit property being Dag no. 183 measuring 0.16 decimal Sali land, has been duly noted. Plaintiff's further case is that they paid taxes to the Government of West Bengal in respect of the aforesaid land and they are in possession and occupation of the same by way of cultivation since the title acquired by registered deed of family settlement dated 22.01.1975 and name of the plaintiff has been recorded in the LR Khatian being No. 343 in respect of his 0.16 decimals.

Plaintiff's further case is that one Sanwar Sk.'s name has also been recorded in respect of the same property in LR Khatian no. 399. Accordingly a question arose as to which entry in the LR record of rights is correct and who is actual owner of said property and as such the plaintiff reported about said entry in the name of Sanwar Sk. before the concerned BL and LRO for correction of the name of Sanwar Sk. Concerned B.L. & L.R.O. started suo motu proceeding and during hearing

it was revealed from the order that RS record of right does not reflect the name Nagendra Nath Mondal and also it appeared from K. B. Khatian that “Shahanur Gong” got the said plot no. 183 as Aowag Dang (deed of exchange) whereas the plaintiff Ranjit Kumar Mondal and others got the plot no. 128 as Aowaz Dang against the aforesaid plot no. 183. Plaintiff’s further case is that no such Aowaz Dang or deed of exchange has been executed by the plaintiff in favour of defendant nos. 1 to 7. Plaintiff’s further case is that his father executed the deed of settlement in the year 1975 and he died in the year 1985. Accordingly said father of the plaintiff had no right title interest to make any deed of exchange with the defendants and in fact no deed of exchange has been executed by the plaintiff or his predecessor with the defendant nos. 1 to 7 in respect of the said suit plot no. 183. Plaintiff further submits that no such deed of exchange is in existence and no such deed of exchange has been filed as yet by the defendants. Plaintiff also stated that from RS khatian it is clear that the plot no. 128 has been exchanged with plot no. 178 and 179 and not with plot no. 183. The suit property has been recorded in the K.B. Record as Aowaz Dang erroneously and said K. B. record is frivolous. In the RS record of right the Dag no. 183 only recorded in the name of plaintiff’s father Nagendra Nath Mondal as the owner of 16 decimal of land and there has been no remarks

about alleged deed of exchange with plot no. 128. In the above backdrop the plaintiff has challenged the title of the defendant and also he has prayed for declaration of the deed of exchange, if any, dated 01.07.2016 as void.

Having considered the aforesaid facts and circumstances of the case and that on a plain reading of the averments made in the plaint, there is nothing to show that the suit is barred either under Section 51C of the West Bengal Land Reforms Act or under any other law. If the contents of the plaint is taken in its face value, it is clear that there exists a serious dispute between the parties over the issue of execution of deed of exchange in respect of plot no. 183 as alleged by the defendants involving right title interest of the parties in the suit property which can only be adjudicated by a civil court of law along with plaintiff's prayer for declaration of the cancellation of the deed of exchange, if any.

Accordingly, in the present context there is no scope to say that drafting of plaint has created any illusion of cause of action, which can be nipped in the bud at the first hearing. Needless to say cause of action does not mean contents of a particular paragraph of the plaint but means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgement. It consists of bundle of material

facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. The material fact to be proved by plaintiff that no deed of exchange in respect of suit plot no. 183 was executed in favour of defendants with their predecessor. The issues involved in the suit are not pure questions of law only. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, it is clear that the issue involved in the suit does not relate to prayer for correction of record of rights but declaration of plaintiff's right title interest in the suit property and as such not barred under Section 51C of the Act of 1955 or by any other law. The ratio laid down in *Nemai Chandra Kundu's* case (supra) has got no application in the present context, since said case relates to a prayer for declaration that suit property is liable to be vested in the State. Though there were other ancillary reliefs in the suit but the principal relief seeking declaration of suit land as vested land is clearly barred under Section 14X of the Act of 1955.

Considering the aforesaid discussion, I find no substance to hold that the order impugned calls for any interference by this court exercising the supervisory jurisdiction under Article 227 of the Constitution of India.

CO 2292 of 2019 is accordingly dismissed.

Urgent Photostat certified copy of this order be supplied to the parties, subject to compliance of requisite formalities.

(Ajoy Kumar Mukherjee, J.)