

24.07.2023
Sl. No.344(ML)
srm

C.O. No. 2027 of 2023
Smt. Parna Majumdar
Versus
Sri Shuvajit Majumdar

Mr. Kaustav Chandra Das

....for the Petitioner.

The revisional application is directed against an order dated May 8, 2023, passed by the learned Civil Judge (Senior Division), 9th Court at Alipore, South 24-Parganas, in Title Suit No.2878 of 2016.

By the order impugned, the learned court below rejected an application under Order VII Rule 11 of the Code of Civil Procedure. The learned court, on a bare reading of the plaint, found that a cause of action was disclosed in the plaint. The reliefs prayed for, were not hit by the provisions of Order VII Rule 11 of the Code of Civil Procedure. The suit was not barred by law.

The learned Advocate for the petitioner submits that the suit property belongs to a cooperative society. Hence, an eviction suit would not be maintainable against a member/flat owner.

It is submitted that Section 102 of the West Bengal Cooperative Societies Act, 2006 would be a complete bar. Section 102 states that any dispute concerning the management or business or affairs of a cooperative society other than the dispute relating to election in a cooperative society, shall be filed before the Registrar for settlement, if such dispute arises among members, past members, persons claiming through members and deceased members.

It is settled law that at the stage of deciding an application under Order VII Rule 11 of the Code of Civil Procedure, the Court can only look into the averments made in the plaint and the documents submitted along with the plaint.

In this case, the averments in the plaint do not indicate that the defendant is either a member of the cooperative society or the owner of a flat belonging to a cooperative society. The dispute as disclosed in the plaint, is not with regard to the membership of defendant in respect of the cooperative society. No dispute with regard to management and affairs of the society has been made.

The plaint does not reflect that the suit relates to any matter relating to the affairs of the cooperative society. The plaint discloses that the plaintiff and Souren Majumdar

were living in a joint mess at 84, Dilkhusha Street, P.S. Karaya, Kolkata-700017. Souren was a widower. Thereafter, Souren purchased a flat and shifted from 84, Dilkhusha Street. Somehow, the defendant came into contact with Souren and developed a relationship. The defendant was allowed by the plaintiff to reside in the suit premises as a licensee after Souren died. The defendant was a divorcee and she took advantage of Souren's loneliness. The plaintiff asked the defendant to quit and vacate the suit premises, but she did not do so and hence the suit has been filed for a decree of eviction upon revocation of licence, permanent injunction and cost.

At this stage, the share certificate filed by the defendant and the averments made in the application for rejection of the plaint, cannot be looked into by this Court. Whether the suit is barred under the provisions of the West Bengal Cooperative Societies Act, 2006, whether the defendant is a member of the cooperative society and whether the plaintiff is the owner of the property in question, are issues, which shall be decided at the trial.

In the matter of *G. Nagaraj & anr. vs. B.P. Mruthunjayanna & ors.* decided in *Civil Appeal No.2737 of 2023*, the Hon'ble Supreme 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.”

However, considering the nature of the suit, the suit should be disposed of within a year from date, by framing appropriate issues.

This Court has not gone into the merits of the suit.

The revisional application is, thus, dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)