

Ct. 27.07
No. 2023
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C.O. 3326 of 2018
M/s. Lexicon Commercial Enterprise Ltd. & Anr.
-Versus-
Khitish Chandra Das,
deceased claiming to be represented by
Janmajoy Das & Ors.

Mr. Debasish Kundu
Mr. Saumyen Datta
Mr. Rajendra Nath Barik ...For the Petitioners

Mr. Ajoy Debnath
Mr. Debranjana Das
Mr. Upamanyu Mukherjee ...For the Opposite Parties

Being aggrieved by and dissatisfied with the order dated 18th June, 2018 passed by the learned Civil Judge (Junior Division), 1st Additional Court, Alipore, South 24-Parganas in Title Suit No. 84 of 2016, the present application under Article 227 of the Constitution of India has been preferred.

Petitioners contended that the father of the opposite parties filed the aforesaid suit for declaration and permanent injunction in respect of the schedule mentioned suit property. In the said suit an application for temporary injunction was also filed which was heard ex parte and an interim order of injunction was passed by the Court below.

Petitioners herein as defendants appeared in the said suit and prayed time for filing written statement. Subsequently the petitioners received copy of an application under Order XXII, Rule 4 of the Code of Civil Procedure and also received an application for administrative transfer filed by one Janmejy Das, son of Late Kshitish Chandra Das before the learned District Judge at Alipore. The said suit was transferred to the learned 1st Additional Civil Judge (Junior Division), Alipore and renumbered as Title Suit No. 84 of 2016. Subsequently, the

said application under Order XXII, Rule 4 of the Code was taken up for hearing and the learned Court below allowed the said application for substitution.

Being aggrieved by that order, the petitioners herein preferred a Civil Revisional Application, which is pending before this High Court. Petitioners filed an application under Order VII, Rule 11 of the Code securing rejection of plaint. Petitioner contended that in the said application petitioners specifically stated that there is no cause of action which has been shown in favour of the plaintiffs on the basis whereof they can file the instant suit and since there is no cause of action or lack of any, as such the same is liable to be rejected. The learned Court below taken up the petitioners' said application under Order VII, Rule 11 and by the impugned order, learned Court below rejected the said prayer without relying the decisions referred by the petitioners before the Court below.

Being aggrieved and dissatisfied with the said order, Mr. Debashis Kundu, learned Counsel appearing on behalf of the petitioner submits that from the schedule of impugned power of attorney it is palpably clear that the property involved in the suit is not within the schedule of power of attorney. The power of attorney which has been granted to the constituted attorney to file the instant suit does not involve any portion of R.S. Dag No. 528 & 528/997, R.S. Khatian No. 408 & 409, J.L. No. 4, R.S. No. 62, Mouza – Jalkhura. In the schedule to the plaint the aforesaid plot Nos. have been inserted as part of the said suit, even though the constituted attorney does not have the authority and/or power to file the suit in relation to the said schedule plots. He further submits that such a blanket

power of attorney cannot be granted and no action including filing of the suit can be undertaken on the basis of such blanket power of attorney, which is bad in law and null and void, having regard to the provisions of Section 21 of the Registration Act.

In such view of the matter the petitioners specific case is that no cause of action has been shown in favour of the plaintiffs, on the basis whereof he can file the instant suit and as such the plaint is liable to be rejected. In this context he relied upon paragraphs 23 and 24 of the decision in the case of *Dahiben Vs. Arvindhbai Kalyanji Bhanusali (Gajra) dead through legal representatives and Ors.*, reported in (2020) 7 SCC 366. He also relied upon paragraph 9 of the decision in the case of *K. Akbar Ali Vs. K. I Umar Khan & Ors.*, reported in (2021) 14 SCC 51 to support his contention that clever drafting creating illusions of cause of action are not permitted in law and in the absence of a clear right to sue, the plaint is liable to be rejected.

Mr. Ajoy Debnath, learned Counsel appearing on behalf of the opposite parties vehemently opposed the said prayer and contended that the opposite parties having no right, title, interest in the property, they cannot question the power of attorney granted by the original owner. Moreover, it is a registered power of attorney and the Court can very well rely upon such document and the Trial Court did not commit any mistake in rejecting the application in view of the fact that in the power of attorney, the power of attorney-holder has specifically stated that beside the properties which are mentioned in the schedule, there are other properties which will also be covered by the said power of attorney. Accordingly, the power of attorney-

holder has every right to file the suit and moreover the plaintiffs in paragraph 16 of the plaint has categorically mentioned about the cause of action and as such the allegation that plaintiffs have no cause of action to file the instant suit does not arise.

In this context he relied upon paragraphs 10, 11, 24, 25, 26 and 27 of the decision in the case of *Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Vs. Ponniamman Educational Trust represented by its Chairperson / Managing Trustee*, reported in (2012) 8 SCC 706. He further relied upon paragraph 20 of the decision in the case of *Sopan Sukhdeo Sable & Ors. Vs. Assistant Charity Commissioner & Ors.*, reported in (2004) 3 SCC 137 in support of his contention that the plaint is liable to be rejected only when the averments in the plaint does not disclose a cause of action even by clever drafting, which is not the case in the present context and as such the Court below has committed no mistake in rejecting the defendants prayer seeking rejection of plaint and as such the order impugned does not call for any interference by this Court.

Having heard the learned Counsel appearing on behalf of both the parties and on perusal of the schedule of the plaint it appears that the suit property is comprising of all the piece and parcel of the land measuring 22 decimals of land at Mouza Jhalkura, being R.S. Dag No. 528 & 528/997, R.S. Khatian No. 408 & 409, J.L. No. 4, R.S. No. 62. According to the plaintiffs such plots are not within the schedule of power of attorney but it appears that in the power of attorney, it has been mentioned that beside the plots which has been mentioned in the power of attorney, if there are certain other plots that will also be the subject

matter of the power of attorney.

In this context the petitioners have also raised an issue contending that such power of attorney which comprises of vague schedule is not sustainable in law and by dint of such power of attorney, the power of attorney holder cannot initiate any proceeding and as such very initiation of such proceeding is bad in law and liable to be rejected in limine.

Since the provision relating to termination of civil action is a drastic one, the Court is required to strictly adhere to conditions enumerated in Order VII, Rule 11 of the Code of Civil Procedure. Court at this stage to determine whether the plaint discloses a cause of action shall only scrutinize the averments in the plaint, read in conjunction with the documents relied, to come to a conclusion whether the suit is barred by any law or not. Having regard to averments made in the plaint and power of attorney which apparently includes all the properties of giver to power of attorney holder, there is nothing to hold that the contents of plaint is manifestly vexatious or without any merit or does not disclose a right to sue. The defence taken by defendants that for unspecified vague schedule, the power of attorney is not sustainable under the relevant provisions of Registration Act or that such vague and indefinite power of attorney does not authorize the power of attorney-holder to institute the suit in respect of non-notified suit plots, does not involve question of law only. In fact averments in the plaint alone would be looked into while considering an application under Order VII, Rule 11. Here whether the impugned power of attorney gives power to the power of attorney-holder to institute the present suit,

is a mixed question of fact and also question of law, to be considered during the trial by casting an issue suitably. Plaint shall not be reject unless on ex-facie reading of the plaint, it could be held that the suit is barred by any law, or it does not disclose right to sue.

In such view of the matter, C.O. 3326 of 2018 is hereby dismissed.

However, the issue regarding admissibility and/or legality of the power of attorney on the basis of which the power of attorney holder has initiated the present suit shall be kept open for adjudication before the Court below at the time of final hearing of the suit, without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)