

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**C.O. 3707 of 2019
Debashis Chakrabartty
Vs.**

**Bimal Chakrabartty, since deceased, Represented by Subir
Chakrabartty & Ors**

For the Petitioner	:	Ms. Shreya Trivedi
For the Opposite parties	:	Mr. Aniruddha Chatterjee Mr. Debabrata Roy
Heard on	:	21.09.2023
Judgment on	:	27.09.2023

Ajoy Kumar Mukherjee, J.

1. This application under article 227 of the Constitution of the India has been assailed against order dated 31st July 2019 passed by Civil Judge (Senior Division), Bankura in Title Suit No. 78 of 2018. By the impugned order, court below rejected defendants prayer for rejection of plaint under the provision of Order VII Rule 11 (a) & (d) of the Code of Civil Procedure (hereinafter called as “code”)

2. The plaintiff/opposite parties herein filed aforesaid Title Suit against the defendant/petitioner herein praying for declaration that under the terms of the Registered deed of Arpanama dated 19.05.1928 executed by Late Baikuntha Nath Chakraborty, they are the shebait of deity in respect of the suit property and also for a declaration that the exparte decree removing them from shebaitship, obtained by the defendant/petitioner in Title Suit

no. 190 of 2013 passed by Civil Judge (Senior Division) 1st court, Bankura, is void and not binding upon them and also for permanent injunction restraining the defendant from interfering their possession in the suit property.

3. In the said suit plaintiff has made various allegations including allegation of practising fraud in service of summon upon other persons and also for not impleading other shebait and therefore plaintiff has sought for passing decree for declaration that the ex parte decree passed in aforesaid Title Suit no 190 of 2013 is void. The petitioner herein as defendant filed an application for rejection of plaint under order VII Rule 11 (a)&(d) of the code contending *inter alia* that the plaintiffs have not given the particulars of fraud in the plaint as required under Order VI Rule 4 of the Code and as such the plaint suffers from non-disclosure of the fact constituting cause of action and the plaintiffs have not stated as to how the defendant in his personal capacity is interested in the subject matter of the suit and as to why the defendant in his personal capacity liable to answer the plaintiffs' demand. Moreover Plaintiffs filed the present suit to their personal capacity and not under representative capacity as shebait of the deity.

4. Plaintiff/opposite party filed written objection and denied allegations made in the petition and also prayed for rejection of the said application filed by the defendant under Order VII Rule 11.

5. Learned court below had taken up said application for hearing in presence of both the parties and by the impugned order has been pleased to observe that plaint clearly discloses cause of action and from the contents of the plaint there is nothing to show that the suit is barred by any law and as

such neither Rule 11 (a) nor Rule 11 (d) of Order VII is applicable in the present context and as such court below rejected defendant's aforesaid application.

6. Mr. Trivedi learned counsel appearing on behalf of the petitioner submits that the deity is the owner of the property and as such all the shebaitis are necessary parties and without impleading them, present suit for declaration of shebaitship is barred by law, which the court below failed to appreciate. The Trial Court acted illegally and with material irregularity in the exercise of its jurisdiction in relying upon only on the statement made in paragraph 8 of the plaint which says "cause of action arose on 27.07.2018" and rejected defendants plea of non-disclosure of cause of action. The court below failed to appreciate that the present suit is also barred by law under order VII Rule 5 of the code as there is nothing in the plaint as to how the defendant is personally interested in the Debutter property and as to why the defendant in his personal capacity is liable to answer plaintiffs demand. Mr. Tribedy further argued even if a decree is passed as prayed for, then that will not be binding upon the defendant or the Debutter estate as the deity has not been impleaded as party/defendant and as such the court failed to exercise its jurisdiction vested in it in law in not rejecting the plaint. Nothing having been stated to the plaint as to why the law of limitation for filing application under Order IX, Rule 13 of the code is to be dispensed with particularly when particulars of fraud have not been given to the plaint.

7. Mr Chatterjee learned counsel appearing on behalf of the opposite parties submits that on bare perusal of the contents of the plaint it is

palpably clear how the exparte decree was obtained by practicing fraud upon the court has been described in paragraph 5 onwards in the plaint. He further contended that for the purpose of deciding the present application the court has to read the entire plaint as a whole and the question whether plaint discloses a cause of action is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety, taking those averments to be correct. Accordingly Mr. Chatterjee submits present application bears no merit at all and the court below is fully justified in rejecting defendants application, which does not call for any interference by this court.

8. I have gone through the averment made in the plaint and also considered submissions made by both the parties. While dealing with an application under Order VII, Rule 11(d), the court is only to see the allegations made in the plaint if taken to be correct as a whole on its face value, whether the suit is barred by any law or not. On perusal of averments made in the plaint in the instant case, there is hardly any scope to say that the suit is barred by any law. It is to be kept in mind, since the power conferred on the court to reject plaint is a drastic step, the conditions enumerated in Order VII, Rule 11 are required to be strictly adhered to.

9. Similarly court is duty bound to scrutinise the averments in the plaint only to determine whether the plaint discloses a cause of action or not while dealing with Rule 11 (a). It is substance and not form which has to be seen. When plaintiff has categorically averred in paragraph 7 onwards in the plaint that defendants with the help of fraudulent decree denying plaintiffs right of shebaitship on and from 27.07.2018, court at this stage is not

required to enquire further about truthfulness of allegations on fact or allegations levelled by defendants in aforesaid application or in the written statement.

10. Now whether averments made in the plaint disclosing the particulars of fraud is sufficient in substance or not in compliance with order VI, Rule 4 and whether plaintiff in his personal capacity can file the suit to assert his right in the suit property or not and whether averments in the plaint discloses any cause of action in plaintiff's personal capacity or not and thereby barred by any law or not are all mixed question of law and fact to be considered during the trial by casting the issue suitably but by no stretch of imagination it can be concluded that averments made in the plaint if taken to be true attracts either Rule 7(a) or Rule 7(d) of order VII of the code.

11. Accordingly I find that the ultimate finding of the court below cannot be called as perverse nor it can be said that the court below has overstepped its jurisdiction by not allowing defendants prayer for rejection of plaint, for which interference of this court under Article 227 of the Constitution of India is warranted. In such view of the matter the order impugned does not call for interference

12. C.O 3707 of 2019 is dismissed. However this order will not preclude the petitioner herein/ defendant to challenge the maintainability of the suit at the appropriate stage of the proceeding.

13. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)