

S/L 29
30.01.2023
Court. No. 12
Sourav

CO 4372 of 2018

**M/s. S. S. Engineering Works
Vs.
Jalan Farms Ltd. & Anr.**

*Mr. Tanmoy Mukherjee
Mr. Kajal Roy
Mr. Rudranil Das*

...for the petitioner.

*Mr. Kumarjit Banerjee
Ms. Sanchari Chakraborty
Ms. Tanishka Khanjewal*

...for the opposite parties.

Both parties are represented by their respective learned advocates.

In this revisional application under Article 227 of the Constitution of India, the Order No. 4 dated 20.02.2018 as passed in L. R. Misc. Case No. 67 of 2016 by the learned Civil Judge, (Junior Division), 4th Court, Howrah is the subject matter of challenge.

By the impugned order, learned trial Court in a proceeding under the provision of Section 8 read with Section 9 of the West Bengal Land Reforms Act has been pleased to reject the application of opposite party no. 1 on contest under Order 7 Rule 11 of the Code of Civil Procedure.

The opposite party no. 1 felt aggrieved and thus preferred the instant revisional application.

Mr. Mukherjee, learned advocate for the opposite party/revisionist, in course of his argument draws attention of this Court to the copy of the petition for preemption, copy of the petition under Order 7 Rule 11 of the Code of Civil Procedure and to the certified copy of the impugned order as passed by the learned trial Court. It is contended on behalf of

the revisionist that while passing the impugned order, the learned trial Court failed to visualize the provisions of Order 7 Rule 11 (d) of the Code of Civil Procedure in view of the fact that mere reading of the pleadings of the said application, clearly indicate that the said application for preemption is barred by law of limitation and, therefore, the learned trial Court ought to have allowed the said application for rejection of plaint as filed by the present revisionist/opposite party no. 1 before the learned trial Court.

Mr. Banerjee, learned advocate for the preemptor/opposite party, however, opposes such contention. Drawing attention to the certified copy of the impugned order, it is contended that point of limitation cannot come under the purview of the provisions of Order 7 Rule 11 of the Code of Civil Procedure and thus, learned trial Court is very much justified in passing the impugned order.

On perusal of the entire materials as placed before this Court and after hearing the learned advocates for both the parties, it appears to this Court that before the learned trial Court the present revisionist has contented that since the said application for preemption before the learned trial Court is barred by law of limitation, the provisions of Order 7 Rule 11 (d) of the Code of Civil Procedure can be made applicable. However, on perusal of the certified copy of the impugned order, it transpires to this Court that learned trial Court while disposing the said application under Order 7 Rule 11 of the Code of Civil Procedure as filed by the opposite party no. 1 before the learned trial Court, came to a conclusion that since the question of limitation is mixed

question of law and fact and since the said point of limitation cannot be decided without trial on evidence, it would be improper to apply the provisions of Order 7 Rule 11(d) of the Code of Civil Procedure as prayed by the opposite party no. 1.

This Court is in complete agreement with the learned trial Court since the point of limitation can be taken at the time of trial of the said preemption case and learned trial Court may dispose of such point by framing a separate issue.

In view of such, this Court thus finds the trial Court has not committed any error of fact or of law in rejecting the said application of the opposite party no. 1 for rejection of the plaint as prayed for.

In view of such, the instant revisional application is dismissed.

The impugned Order No. 4 dated 20.02.2018 as passed in L. R. Misc. Case No. 67 of 2016 by the learned Civil Judge, (Junior Division), 4th Court, Howrah is hereby affirmed.

It is, however, made clear that this order shall not preclude the present revisionist/opposite party no. 1 to file a separate application under Order 7 Rule 11 of the Code of Civil Procedure before the learned trial Court, if occasion so arises. It is also made clear that in the event such an application under Order 7 Rule 11 of the Code of Civil Procedure is filed by the present revisionist before the learned trial Court, all points would be kept open except the point of limitation.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)