

28.07.2023
Sl. No.14(DL)
srm

C.O. No. 3684 of 2022
Harshada Hotels Private Limited
Versus
Sri Agniswar Naskar

Mr. Saptangshu Basu,
Mr. Debjit Mukherjee,
Mr. Snehashis Sen

...for the Petitioner.

Mr. Shyamal Kanti Banerjee,
Mr. Jayanta Datta,
Ms. Nipasri Tagore,
Mr. Ratan Pathak,
Mr. Ujjwal Chatterjee,
Mr. Sudip Pandit,
Mr. Shibaprakaash Bhattacharya,
Mr. Atanu Mondal,
Ms. Madhushree Bhattacharya

...for the Opposite Party.

This revisional application has been filed challenging an order dated November 23, 2022 passed by the learned Civil Judge (Junior Division), 6th Court at Alipore, South 24-Parganas. The learned court below rejected an application under Order VII Rule 11 of the Code of Civil Procedure. The learned court observed that when a substantial question of title was involved, the plaint could not be rejected. The plaintiff had a right to approach the civil court for declaration of his right, title, interest and possession.

Mr. Basu, learned Senior Advocate appearing on behalf of the defendant/petitioner submits that the jurisdiction of the learned civil court was barred under the provisions of Section 51C of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act). Referring to paragraph 12 of the plaint, Mr. Basu submits that the plaintiff has stated, in no uncertain terms, that the record of rights was incorrect and the Block Land and Land Reforms Officer had been approached. On such pleading alone, the plaint was liable to be rejected, being barred by law.

Reference has been made to the decision of the Hon'ble Division Bench in the matter of Sri Nemai Chandra Kundu vs. Sri Kalyan Das & Ors. passed in SAT 638 of 2015. The Hon'ble Division Bench had directed that suit was not maintainable and the learned tribunal ought to have been approached, as the learned tribunal also had the right to declare rights and interest of *raiyats*.

Apart from the abovementioned ground for seeking rejection of the plaint, Mr. Basu has also relied upon paragraph 13 of the plaint to indicate that the plaintiff had specifically stated that the defendant had started work on the suit property. There was an admission of dispossession and as such, a prayer for recovery of khas possession ought to have been made. In the absence of such prayer, the plaint was liable

to be rejected under the provisions of Section 34 of the Specific Relief Act.

Mr. Banerjee, learned Advocate appearing on behalf of the opposite party submits that the learned court below did not err in passing the order impugned. At the very nascent stage of the suit, the question as to whether the suit was barred under the provisions of the said Act could not be decided. The reliefs claimed were not available in the proceeding under the said Act. A bare reading of the plaint, would not indicate that the suit was barred either under the provisions of the Land Reforms Act or under the provisions of the Specific Relief Act.

Heard learned Counsel for the respective parties.

The plaint case is as follows:

- (a) The plaintiff purchased the suit property from one Samar Mal. Samar Mal became owner of the suit property by virtue of a deed of gift executed by one Manoranjan Mal.
- (b) The plaintiff was in occupation and possession of the land.
- (c) The defendant, for wrongful gain, was trying to encroach the land.
- (d) On December 15, 2020, the men and agents came to the schedule land and tried to encroach the land by digging earth.

- (e) Immediately, a complaint was lodged before the Bishnupur Police Station and proceedings under Section 144(2) of the Code of Criminal Procedure was also filed before the learned Executive Magistrate, 1st Court at Alipore.
- (f) Necessary orders were passed upon the Officer-in-Charge, Bishnupur, to enquire and file a report and also to keep a vigil and maintain peace.
- (g) Prosecution under Section 107 of the Code of Criminal Procedure was submitted by the police.
- (h) The defendant did not stop his activities. The plaintiff applied for recording of his name in the record of rights, but found that the record was in the name of the defendant. The plaintiff had taken steps before the Block Land and Land Reforms Officer.
- (e) The defendant was trying to cause disturbance and finding no other alternative the suit was filed.

The following reliefs were prayed for:

- (a) Declaration that the plaintiff was the sole and absolute owner of the suit property.
- (b) Declaration that the defendant did not have any right, title and interest in the suit property.

- (c) Declaration that the defendant could not cause any disturbance of the free ingress and egress to the suit property.
- (d) Permanent injunction, temporary injunction, cost and other reliefs.

In the application under Order VII Rule 11 of the Code of Civil Procedure, the defendant urged that the cause of action of the suit arose out of a proceeding under Section 51 of the West Bengal Land Reforms Act and the jurisdiction of the civil court was barred. The plaintiff having approached the BLLRO could not maintain the suit for declaration of his right, title and interest. The plaint has been craftily drafted in order to create an illusion of a cause of action.

Having heard learned Counsel for the respective parties, this Court is of the view that the learned court below did not err in refusing to reject the plaint at its very inception. The reasoning may not be perfect, but as the final decision is correct and in accordance with law, the said order is not subject to revision by this Court under Article 227 of the Constitution of India. The order is neither perverse nor contrary to law nor based on extraneous considerations. Thus, the order impugned is liable to be upheld.

The plaint case is that Samar Mal sold the property to the plaintiff. The plaintiff was enjoying the property. The

defendant was disturbing such enjoyment and trying to dig earth. The plaintiff approached the police authorities as also the learned Executive Magistrate for necessary protection. The plaintiff found that the name of the defendant has been entered in the LR records and the plaintiff had taken adequate steps before the appropriate authority.

A bare reading of the plaint does not disclose that the suit is barred by the provisions of the said Act. Only because a mention has been made in paragraph 12 that the name of the defendant was incorrectly recorded in the record of right and the plaintiff was taking steps before the authority, does not mean that the plaintiff had prayed for reliefs which were to be granted by an authority under the West Bengal Land Reforms Act, 1955.

With regard to the submission that the suit was barred under the provisions of Section 34 of the Specific Relief Act, this Court is of the view that at the stage of rejection of the plaint, this issue was not required to be decided. This issue can be raised at the final hearing of the suit, if available to the defendant.

The decision in *Nemai Chandra Kundu* (supra) is distinguishable on facts. The Hon'ble Division Bench, at the stage of hearing the second appeal arrived at the conclusion that the declaration of right, title and interest of the plaintiff in

the said suit was based on the prayer that the 'Kathma Dighi' was not liable to be vested. As the civil court did not have jurisdiction to decide the issue of vesting, Their Lordships found that the main prayer being a prayer against vesting, the ancillary prayer for declaration of right, title and interest would not be available. However, the facts in this case are completely different. The plaint read as a whole, does not indicate that the right, title and interest claimed by the plaintiff, is based on any proceeding under the West Bengal Land Reforms Act, 1955. Thus, the order impugned does not call for interference. All issues are to be decided at the trial and not at the stage of the rejection of the plaint.

Reference is made to decision of *G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.* decided in *Civil Appeal No.- 2737 of 2023*. The Hon'ble Apex 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."

In the decision of *Kamala and ors. v. K.T. Eshwara Sa and ors.*, reported in (2008) 12 SCC 661, the Hon'ble Apex Court held as follows:-

"21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not

be the subject-matter of an order under the said provision.”

The law is well settled that at the stage of deciding an application under Order VII Rule 11 of the Code of Civil Procedure, only the averments in the plaint and the documents annexed to the plaint are to be looked into. In this case, the plaint case does not indicate that the suit is barred by law.

The revisional application is, thus, dismissed.

The learned court below shall proceed expeditiously with the application for injunction.

There will be, however, no order as to costs.

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

(Shampa Sarkar, J.)