

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

THE HON'BLE JUSTICE PARTHA SARATHI SEN

C.O. No.4108 of 2013

With

CAN 1 of 2015 (Old No. CAN 11569 of 2015)

With

CAN 4 of 2023

Satyajit Das & Ors.

Vs.

Smt. Subrata Naha & Ors.

For the Petitioner :

Mr. Sanjay Mukherjee, Adv.,
Mr. Bodhisattwa Chatterjee, Adv.

For the opposite party nos. 2 and 3.:

Mr. Tanmoy Mukherjee, Adv.
Mr. A.K Hazra, Adv.,
Ms. Ajeya Chowdhury, Adv.,
Ms. Soumi Chatterjee, Adv.,
Mr. Souvik Das, Adv.

Last Heard on

:

08.09.2023

Judgment on

:

13.09.2023

Partha Sarathi Sen, J. : –

1. The instant revisional application as filed under Article 227 of the Constitution of India impugns the judgement and order dated 31.07.2013 passed in Title Suit No. 30 of 2003 by the Learned Civil Judge, Senior Division, 10th Court, Alipore, whereby and whereunder the said court dismissed the said suit on contest.

2. The plaintiffs of the said suit felt aggrieved and thus preferred the instant revisional applications.

3. Before the learned trial court it is the plaint case that plaintiffs are the tenants in respect of the 'suit property', particulars of which has been mentioned in the Schedule A of the said plaint and taking advantage of the absence of the original plaintiff (who has died during the pendency of the said suit) the defendants being the landlords took illegal possession of the suit property on 04.05.2003 and thus dispossessed the plaintiff from his settled possession in the suit property without due process of law. On the basis of the averments made in the plaint the original plaintiff made the following prayers in his plaint before the learned trial court namely:

“A. A decree of declaration that the plaintiff is still a Tenant in respect of the suit property.

B. A decree for recovery of possession of the suit property or

C. A decree for mandatory injunction against the defendants compelling them for Restoration of possession of the suit property in favour of the plaintiff and in default restore the possession of the suit property through court;

D. A decree for damage to the tune of Rs.1,40,000/-. Out of which Rs.10,000/- for causing damage to the Suit Property has now been tentatively “valued”. The Plaintiff Prays for determination of actual damage to the Suit Property and prays for the Decree of the said actual damage along with a further sum of Rs.1,30,000/- for loss of valuable goods and articles.”

E. Cost of the suit;

F. Any other relief as the plaintiff is entitled under law and equity;”

4. The said suit was duly contested by the defendants/ opposite parties by filing their common written statement denying the averment of the plaint.

5. On the basis of the pleadings the learned trial court framed six issues. Thereafter both the parties to the said suit adduced their respective evidences both oral and documentary. The learned trial court while passing the impugned judgement had dealt with all the issues on the basis of the

evidence of the parties and thus came to a finding that the present plaintiffs had miserably failed to fulfill their requirement for a declaration as tenants as per provision of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 and thus dismissed the said suit by passing the impugned judgement.

6. Since in view of Section 96 of the Code of Civil Procedure an appeal shall lie from decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court save otherwise expressly provided in the said Code or in any other law for the time being in force and since challenging the impugned judgement and decree the instant revisional application under Article 227 of the Constitution of India has been preferred instead of an appeal, this court has heard the learned advocates for the contending parties on the point of maintainability of the instant revisional application.

7. In support of the maintainability of the instant revisional application learned advocate for the defendants/petitioners at the very outset draws attention of this Court to the Annexure P-1 of the instant revisional application being the photocopy of the plaint as filed in Title Suit No.30 of 2003 before the learned trial court. Drawing attention to the various paragraphs of the said plaint including the prayer portion of the plaint it is contended by Mr. Sanjay Mukherjee, learned advocate for the defendants/revisionists that since Title Suit No. 30 of 2003 before the learned trial court has been filed under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as the 'said Act of 1963') in view of the provisions of the said Section of the said Act of 1963 no appeal shall lie from the impugned judgement and decree as passed by the learned trial court

and thus the instant revisional application is very much maintainable. It is further contended on behalf of the revisionists/ plaintiffs that on bare perusal of the plaint of the said suit, it would reveal that in the plaint of Title Suit No.30 of 2003 the revisionist/ plaintiffs had prayed for decree for recovery of the possession of the suit property as the main relief while the decree for declaration and the decree for mandatory injunction and the other reliefs have been prayed for as consequential reliefs. It is further contended on behalf of the revisionists/plaintiffs that though a suit under Section 6 of the Specific Relief Act is based on previous possession but in such suit there is no bar in claiming any other title in view of the explicit provision of Section 6(1) of the Specific Relief Act.

8. Mr. Sanjay Mukherjee, learned advocate for the revisionists/plaintiffs further argued that from the pleadings of the plaintiffs as made before the learned trial court it is also explicit that the plaintiff's main prayer for recovery of possession was based upon his previous possession and not upon his title over the suit property. It is thus, argued that the instant revisional application as filed in its present form is very much maintainable.

9. In course of his submission Mr. Sanjay Mukherjee, learned advocate for the revisionists/ plaintiffs further submits that for the sake of argument, if this court at all holds that the instant revisional application is not maintainable, this Court has ample power to convert the instant revisional application to that of an appeal and thereafter to return the memo of appeal along with the certified copy of the impugned judgement and decree to the learned advocate for the revisionists/plaintiffs for filing the same before the appropriate court having pecuniary jurisdiction with a direction to the said

appellate court to consider the provision of Section 14 of the Limitation Act, 1963 favourably in favour of the appellants/plaintiffs while computing the period of limitation for filing the said proposed converted appeal.

10. Reliance was placed on behalf of the present revisionists/plaintiffs upon the reported decision of ***Bani Pal Vs. Arun Kumar Pal*** reported in ***(1999) 1 Cal LT421 (HC)***.

11. In respect of the interim application being CAN 4 of 2013 it is submitted on behalf of the revisionists/plaintiffs that liberty may be given to the present revisionists/plaintiffs to file similar such application before the First Appellate Court if this court holds that the instant revisional application is not maintainable.

12. Per contra, Mr. Tanmoy Mukherjee, learned advocate for the opposite parties /defendant nos. 2 and 3 contended that from the four corners of the plaint of Title Suit no.30 of 2003 it would not reveal that the said suit was filed under Section 6 of the Specific Relief Act. It is argued that on a bare perusal of the said plaint it would reveal on the contrary that such suit for declaration , injunction and recovery of possession was filed under Section 5 of the said Act of 1963 in the manner provided by the Code of Civil Procedure.

13. Drawing further attention to the plaint of Title Suit No. 30 of 2003 Mr. Tanmoy Mukherjee, learned advocate for the opposite parties/defendant nos. 2 and 3 submits before this Court that nowhere in the plaint of the said suit it has been mentioned that the said suit has been filed under Section 6 of the said Act of 1963. It is further argued by him that from the concise statement of the said suit it would reveal that the said suit was for

declaration, recovery of the possession, mandatory injunction and for damages. It is further argued on behalf of the opposite parties/defendant nos. 2 and 3 that from the pleadings of the plaint it would also reveal that the plaintiffs' prayer in the plaint for recovery of possession was not based on their previous possession and on the contrary the same was based on their alleged title over the suit property as a tenant thereof which is why learned trial court framed issue no.3 in the manner indicated hereunder namely;

“ 3. Is the plaintiff a tenant in respect of the suit premises.”

14. It is further argued on behalf of the opposite parties/ defendant nos. 2 and 3 that before the learned trial court the plaintiffs never objected to frame all such issues and adduced their evidence to substantiate the said issue no. 3 in order to prove his title and thus under no stretch of imagination it can be said that the impugned judgement and decree has been passed by the learned trial court in a suit under Section 6 of the Specific Relief Act, 1963 and thus there can be no bar in filling an appeal challenging the impugned judgment and decree and thus according to Mr. Tanmoy Mukherjee the instant revisional application is not at all maintainable.

15. Drawing attention to the valuation statement of the plaint, it is further argued by Mr. Tanmoy Mukherjee, learned advocate for the opposite parties/ defendant nos. 2 and 3 that since this High Court is unable to entertain an appeal challenging the impugned judgment and decree for want of adequate pecuniary jurisdiction it would not be proper for this Court to convert the instant revisional application to that of an appeal and thereafter

to return the same to the Learned Advocate for the plaintiffs/revisionists to file before the appropriate court. Drawing attention to Article 116 of the Schedule of the Limitation Act, 1963 vis-à-vis the certified copy of the impugned judgement and decree it is submitted further on behalf of the opposite parties/ defendant nos. 2 and 3 that since the proposed appeal of the present revisionists/plaintiffs is now hopelessly barred by limitation, this Court ought not to pass any favourable order in favour of the present revisionists under Section 14 of the Limitation Act. Mr. Tanmoy Mukherjee, learned advocate for the opposite parties /defendant nos. 2 and 3 thus submits that a dismissal order may be passed on the ground of non maintainability of the instant revisional application.

16. This Court has meticulously perused the entire materials as placed before it. This court has also given its due consideration over the submissions of the learned advocates of the contending parties. On perusal of the photocopy of the plaint as filed in Title Suit no. 30 of 2003 it transpires to this Court that nowhere in the said suit it has been mentioned that the said suit has been filed under Section 6 of the said Act of 1963. The concise statement of the plaint of the said suit is quoted below in verbatim:-

**“SUIT FOR DECLARATION, RECOVERY OF POSSESSION,
MANDATORY INJUNCTION AND DAMAGE VALUED Rs. 1,50,000/-”**

17. On perusal of the averments of the plaint of Title Suit. No. 30 of 2003 it appears to this Court that plaintiffs’ said suit was basically a suit for decree for declaration wherein the decree for possession and decree for mandatory injunction have been sought for as consequential reliefs as per provision of Section 34 of the said Act of 1963. For better appreciation of the

contentions of the contending parties, this court considers that the relevant portion of paragraph 18 of the said plaint is required to be looked into and the same is reproduced hereunder in verbatim:-

“Thereby the very status of the Plaintiff as a tenant in the Suit property has been clouded which is required to be removed by way of a Declaration. Moreover the plaintiff is entitled to get back his possession in the Suit Property by a Decree of Recovery of Possession or restoration of Possession in the form of Mandatory Injunction.”

18. From the aforesaid averments it is thus crystal clear that in the said suit the plaintiff apprehended that his title in respect of the suit property has been clouded for which he had sought for declaration of his title and then he had prayed for recovery of possession of the suit property and/or mandatory injunction as consequential reliefs thereto.

19. In view of the discussion made hereinabove, this Court has got no hesitation to hold that in Title Suit No.30 of 2003 the revisionist /plaintiffs has not proceeded under Section 6 of the said Act of 1963 and on the contrary he had proceeded under Section 5 of the said Act of 1963 and therefore the present revisionist/plaintiffs ought to have filed an appeal challenging the impugned judgement and decree instead of filing the instant revisional application under Article 227 of the Constitution of India and thus this Court holds that the instant revisional application is not maintainable.

20. The next question which comes for consideration before this Court is as to whether it would be proper for this Court to convert the instant revisional application to that of an appeal following the dictum of a Co-ordinate Bench of this Court in the case of **Bani Pal** (supra). Admittedly the valuation of the Title Suit no. 30 /2003 has been assessed to the tune of Rs.

1,50,000/- and therefore under Section 21 of the Bengal, Agra, Assam Civil Courts Act, 1887 even if, this court converts this revisional application to that of an appeal such appeal, cannot be heard by this court for want of pecuniary jurisdiction.

21. The next question which falls for determination of this Court is as to whether it would be proper for this Court to pass a favourable order in favour of the present petitioners under Section 14 of the Limitation Act in the event the plaintiff is given liberty to file an appeal before the Appropriate Appellate Court after taking back the certified copy of the impugned judgement and decree. It reveals that the impugned judgement and decree was passed on 31.07.2013 while the certified copy of the said impugned judgement and decree has been applied on 06.11.2013 that is much after the expiry of period of limitation since under Article 116 of the Limitation Act the time limit prescribed for filing the appeal in the appropriate Appellate Court against the impugned judgement and decree is 30 days. However, this court further considers that since the certified copy of the impugned judgment and decree has been applied for after the expiration of time for filing of the appeal Section 9 of the Limitation Act comes into operation.

For better appreciation of the facts and circumstances as invoked in this case, Section 9 of the Limitation act is reproduced herein below in verbatim:-

“ 9. Continuous running of time.—Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it: Provided that where letters of administration to the

estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.”

22. In view of the discussion made hereinabove, this Court holds that the present revisionist's alternative prayer for conversion of the instant revisional application into an appeal also cannot be entertained.

23. As a result the instant revisional application fails and is dismissed being not maintainable however without any order as to costs. Consequently all the interim applications are also disposed of.

24. Liberty is however given to the present revisionists to take back the certified copy of the impugned judgment and decree by replacing the same with an authenticated photocopy of the impugned judgement and decree so as to enable the present petitioners to approach the appropriate Appellate forum, if so advised.

25. Department is directed to forward a copy of this judgement along with the LCR, if received in the meantime to the Learned trial court forthwith.

26. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Partha Sarathi Sen, J.)

Later:-

Learned advocate for the petitioners and learned advocate for the opposite party nos. 2 and 3 are present.

Judgement is pronounced in court today.

It is, however, made clear that this Court has not entered into the merit of the instant revisional application.

Let this order be treated as part of the judgement as pronounced today in Court.

(Partha Sarathi Sen, J.)