

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

C.O. 97 of 2023

ANTESHWAR ROY
Vs.
SRI ABINASH BAL & OTHERS

For the Petitioner : Mr. Kunaljit Bhattacharjee
Mr. Alok Saha
Mr. Satyam Sarkar

Heard on : 28.8.2023, 31.8.2023

Judgment on : 31.8.2023

The Court:

1. This application under Article 227 of the Constitution of India impeaches the Order No. 11 dated 10.8.2023 passed by the learned Civil Judge (Senior Division) Jalpaiguri in connection with the Partition Suit No. 50 of 2022. By the impugned order learned Trial Court was pleased to reject the petition under Order VII Rule 11(d) of the C.P.Code filed by the defendant no. 1.
2. For the sake of convenience the parties to the proceeding shall be referred to the manner they have been arrayed in the suit.
3. Briefly stated, plaintiff filed a suit for partition against the three defendants namely, Anteshwar Roy, Bimal Roy and Sambhu Nath Bal. Sri Anteshwar Roy, defendant no. 1 filed a petition under Order VII Rule 11 (d) of the C.P.Code seeking rejection of plaint on the ground that the plaint does not disclose the status of the defendant as a co-sharer and for that reason alone the plaint should

be rejected which the learned Trial Court failed to appreciate. My attention is drawn to the copy of the plaint. From the cause title it appears that Abinash Bal, the plaintiff and Sambhu Nath Bal the defendant no. 3 are the sons of Dhirendranath Bal. Defendant no. 1 and defendant no. 2 are the sons of Temai Roy and Bimal Roy respectively. The averment made in the plaint, it is rightly pointed out, does not demonstrate the *inter se* relation among the parties to the suit. Even the plaintiff has not claimed his extent of share in the suit property. Only in paragraph 10, it is stated that suit land has not been partitioned by “metes and bounds” and the defendants are trying to occupy the property of the plaintiff which he has acquired by way of gift as well as by way of purchase apart from acquiring the same by way of inheritance. True, it is the plaint is not happily drafted but the defendant no. 1 has sought for rejection of plaint on the ground that the plaint does not contain any averment as to the status of the defendant no. 1 as co-sharer in respect of the suit property which is why the plaint should be rejected.

4. Mr. Bhattacharyya, learned counsel appearing on behalf of the petitioner articulates his case by saying that the plaint since does not disclose any cause of action as against defendant no. 1, it should be rejected under Order VII Rule 11 of C.P.C.

5. To buttress his point Mr. Bhattacharyya places his reliance upon the judgement of Hon'ble Apex Court 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*** and the decision of Hon'ble Division Bench in ***Tara Pada Ray vs. Shyama Pada Ray and Others*** reported in ***AIR 1952 CAL 579***.

6. In ***Church of Christ Charitable Trust and Educational Charitable Society (supra)*** the plaint in a suit for Specific Performance of Contract was rejected as against one of the parties on the ground of non compliance of provision of Order VII Rule 11, Rule 14(1) and coupled with Forms 47 and 48 in Appendix “A” of the Code which is statutory in nature.

7. In Tarapada Ray (supra) in an appeal Hon’ble Division Bench held that right of party to claim partition primarily depends on the fact to be proved that there are devisable joint properties held by the parties. If there be no such property, Court cannot be called upon to pass the decree for partition. The judgements relied upon by Mr. Bhattacharyee are not applicable in our case primarily because of difference in factual matrix of the cases decided and the case at hand. At best one of the defendants i.e. defendant no. 3 is full blood brother of the plaintiff, having divisable interest in suit property.

Order VII Rule 11 of the C.P.C. enunciates :

“11. Rejection of plaint.— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

8. The cause of action is to be gathered from the bundle of facts.

9. As I have already pointed out the plaint has not been drafted happily but upon plain reading of the averments of the plaint it can be comprehended that there exists devisable joint properties, held by the parties. The plaintiff has made an averment as to the cause of action for the suit. If the plaintiff fails to prove the existence of the devisable joint property his suit will fail. If the defendant no. 1 considers himself to be a stranger having no devisable interest in the property in suit he can approach the learned trial court to get his name deleted by invoking the appropriate provision of law, as laid down in the Civil Procedure Code. But for that reason, plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure.

10. Learned trial court was absolutely justified in passing the order impugned which does not warrant interference

11. The revisional application does not merit any consideration and is dismissed, however without any order as to costs.

12. Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J)