

06.12.2023
SL.12, Ct.2
AJ.

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Appellate Side**

C.O. 99 of 2023

**Sri Bhaskar Goon
-Vs-
Mrs. Mita Goon & Ors.**

Mr. Nabankur Paul.
.....for the Petitioner.

Mr. Arup Ratan Choudhury,
Mr. Rounak Paul.
.....for the O.P. Nos.1 to 3.

The revisional application under Article 227 of the Constitution of India is at the instance of the defendant no. 1 in a Money Suit and is directed against the order dated July 25, 2023 passed by the learned Civil Judge (Senior Division) Jalpaiguri in the said suit being Money Suit No. 136 of 2022.

The petitioner prayed for rejection of the plaint of the said suit under Order VII Rule 11 of the Code of Civil Procedure *inter alia* on the grounds that the suit is barred by limitation and under the provisions of Commercial Courts Act, 2015.

The learned Trial Judge by the order impugned has dismissed the said application.

Mr. Paul, learned Advocate for the petitioner submits that he is not pressing the

prayer of the petitioner for rejection of the plaint of the said suit being barred under the provisions of Commercial Courts Act, 2015 but the suit is barred by limitation inasmuch as the deed of conveyance, recovery of consideration price of which has been prayed for in the suit, was executed long back in the year 2016 within the knowledge of the plaintiffs but the suit has been filed only in the year 2022.

Mr. Choudhury, learned Advocate for the plaintiffs/opposite parties on the other hand submits that the defendant no. 1 sold the lands of the plaintiffs being their constituted attorney and received the consideration price as such, but did not pay the same to the plaintiffs. The demand for the said money was refused on June 30, 2022 and the suit was filed within the period of limitation from the said date.

Heard the learned advocate for the parties, perused the materials-in-record.

The suit is based on a cause of action accrued to the plaintiffs on the refusal of the defendant no.1 to meet the demand of the plaintiffs for money and the suit prima facie has been filed within the period of limitation from the said date of refusal.

Limitation is a mixed question of law and fact, same can be set up as a ground for rejection of the plaint only when it is apparent on the face of the plaint but this is not such a case however, the issue of maintainability of the suit on the ground of limitation shall be decided in course of trial on the basis of evidences to be adduced.

The order impugned, therefore, does not call for any interference.

C.O. 99 of 2023 is dismissed without any order as to costs.

The disposal of the suit be expedited.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)