

Ct.
No.
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23.11
2023

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

C.O. 105 of 2023

Ganesh Bhowal
-Versus-
Smt. Anjana Dutta & Ors.

Mr. Soumyajyoti Dutta
Ms. Druti Roy
Ms. Kakoli Roy **..For the Petitioner**

Mr. Bikramaditya Ghosh
Ms. Supriya Singh **..For the Opposite Parties**

This is an application under Article 227 of the Constitution of India against order No. 23 dated 28th July, 2023 passed by the learned Civil Judge (Junior Division), Jalpaiguri in Title Suit No. 122 of 2020. By the impugned order defendant's application under Order 11 Rule 21 read with Section 151 of the Code of Civil Procedure (hereinafter called as Code) dated 4th March, 2023 was rejected by the learned Court below.

Petitioner's case in a nutshell, is that the opposite parties herein brought against the petitioner aforesaid suit for declaration that the purported agreement dated 24.12.2007 is manufactured and forged one and is created by forging the signature and as such it is bad in law and a void document and also for injunction.

During pendency of the said suit the defendants herein filed one application under Order XI Rule 18 of the Code for a direction upon the plaintiff to produce the documents for inspection which they have relied on in their plaint. The said application under Order XI Rule 18 came up for hearing before the Court below and learned

Court below vide its order dated 20th January, 2023 was pleased to held, since plaintiffs have no original record in their custody so the plaintiffs were directed to supply copy of the documents to the defendants for their perusal.

Thereafter, the defendant No. 1 filed impugned application under Order 11 Rule 21 stating that after passing the aforesaid order the plaintiff supplied Xerox copies of some documents to the defendants, but refrained from supplying some other document as mentioned in the notice under Order XI Rule 16 and the petition under Order XI Rule 18 of the Code.

During hearing learned Counsel appearing on behalf of the petitioner submits that the plaintiff supplied copy of other relevant documents to the defendants but plaintiff did not supply copy of the agreement dated 24.12.2007 in compliance of the Courts order. Said document is very much important for this suit as plaintiff not only prayed for declaring said agreement as void but plaintiff has also referred said document to substantiate his cause of action for filing the suit. Since the plaintiff has not complied the Court's direction in respect of filing either original or copy of the agreement dated 24.12.2007, so the suit is liable to be dismissed under Order XI Rule 21 of the Code.

Against the said application the plaintiff herein filed written objection contending that the husband of the plaintiff No. 1 was conducting the present suit and he was the custodian of the documents relating to the suit but due to unfortunate demise of the husband of the

plaintiff No. 1, the plaintiff has started searching as relied in the plaint and at present those documents are available in the custody of the plaintiffs and copy of those documents are already supplied to defendant No. 1. However he contended that the agreement dated 24.12.2007 is not available in their custody as has been averred in the plaint.

Learned Court below after considering the submissions made by both the parties rejected the said application under Order XI Rule 21 observing that the plaintiffs on affidavit stated that the said document are not available in the custody of the plaintiff and therefore they could not furnish aforesaid document to the defendant No. 1 thereby learned Court below held that plaintiffs have no latches to supply said document to defendant No. 1 and thereby Court below exempted the plaintiff from supplying the said document to the defendant No. 1 at present and permitted to proceed with the suit.

I have considered the submissions made by both the parties. In the plaint, plaintiffs have claimed their right, title and interest in the suit property and they have also specifically stated, while they were in possession of the suit property on 9th August, 2019 the defendant No. 1 and his brother came out with a false story about an agreement dated 24.12.2007 and placed the said purported agreement paper before the learned SDM(S), Jalpaigur in order to get a favourable order, without supplying any copy of the said purported agreement to the plaintiff. Accordingly, the plaintiff

apprehended that the defendants have procured agreement dated 24.12.2007 forging plaintiff's signature to grab plaintiff's land, which appears in paragraph 23 of the plaint and in paragraph 29, plaintiff has further contended that defendant No. 1 being armed with the said forged agreement is trying to create obstruction in the peaceful enjoyment of the schedule land by the plaintiff.

Mr. Soumyajyoti Dutta, learned Counsel appearing on behalf of the petitioner submits when the application under Order XI Rule 18 was filed, the plaintiff did not give proper reply and on the contrary he had verbally submitted that the originals are not lying in his custody but the copy of the said documents are lying in his custody, which he will supply to the defendants and since the plaintiffs have not disclosed in reply to the application under Order XI Rule 18 of the Code, the plea taken by the plaintiff afterwards that the said document is not lying in his custody does not stand and the provision laid down in Order XI Rule 21 clearly attracts in the present context.

He has relied upon the decisions in the case of ***Maria Margarida Sequeria Fernandes & Ors. Vs. Erasmo Jack De Sequeria (D)***, reported in **(2012) 3 WBLR (SC) 122**.

Since the plaintiff has clearly averred in paragraph 23 of the plaint that the defendants in order to get favourable order placed a purported agreement dated 24.12.2007 before the learned SDM(S), Jalpaiguri without supplying any copy of the said purported

agreement to the plaintiff, I find no substance in the contention that the plaintiff has ever claimed that the said agreement or copy of the said agreement dated 24.11.2007 is in his custody.

It is also argued during hearing that the parties to the suit i.e. either plaintiff or the defendant does not know whether such agreement dated 24.12.2007 at all exists or not. In such view of the matter, when the existence of the said document is very much in doubt and when the plaintiff has specifically averred in the plaint that the copy of the said agreement was never supplied to him but he merely apprehends that defendant might have procured any such document forging his signature to get favourable order and/or to disturb his possession armed with said document, the question of compelling plaintiff to file said document does not arise and non-compliance of any such order, the question of attracting Order XI Rule 21 does not arise.

It is well settled that the stringent provision of Rule 21 should be applied in extreme cases, unless the Court is satisfied that the plaintiff was willfully withholding information by refusing to answer interrogatories or by withholding the document which he ought to discover. Moreover on a bare perusal of order dated 20th January, 2023, it is apparent that said order suffers from vagueness. Court below only directed the plaintiffs to supply copy of documents without making any specification.

In such view of the matter, I do not find any perversity in the impugned order dated 28th July, 2023

nor it amounts to non-exercise of the jurisdiction which is vested upon it.

In view of the above, Application, being C.O. 105 of 2023 stands dismissed.

However, this order will not preclude the defendant/petitioner to prefer any other appropriate application including applications under Order VII Rule 11 or Order XIV, Rule 2 of the Code before the Court below.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)