

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

THE HON'BLE JUSTICE CHITTA RANJAN DASH

And

THE HON'BLE JUSTICE PARTHA SARATHI SEN

FMAT 2 of 2023

With

CAN 1 of 2023

(Assigned)

Magnet Construction Pvt. Ltd. & Anr.

-Vs-

Krishna Trading & Ors.

For the Appellants/Petitioners:

Mr. Haradhan Banerjee, Adv.,

Md. Nurul Haque, Adv.,

Sk. Afrojul Haque, Adv.,

Mr. Nilmony Das, Adv.

For the Respondents 2 & 7/
Defendants:

Mr. Partha Chakraborty, Adv.,

Mr. Debayan Ghosh, Adv.,

Ms. Poulomi Dutta, Adv.

Hearing concluded on:

07.03.2024.

Judgment on:

12.03.2024.

PARTHA SARATHI SEN, J. : –

1. In this appeal the Order no. 19 dated 22.12.2022 as passed in Title Suit No. 1289 of 2022 by the learned Judge-in-Charge, Bench No.XII, City Civil Court at Calcutta has been impugned. By the impugned order learned trial court has dismissed the plaintiffs' application dated

16.06.2022 as filed under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure and at the same time directed for return of the plaint for presentation of the same before the Competent Court having jurisdiction to try the same holding that the said Court had got no territorial jurisdiction to try the said suit. The plaintiffs felt aggrieved and preferred the instant appeal.

2. Mr. Banerjee, learned counsel appearing for the appellants in course of his submission draws attention of this Court to the impugned order as passed by the learned trial court. It is contended by Mr. Banerjee that a serious miscarriage of justice has been occurred since the learned trial court while disposing an injunction application passed the order impugned i.e. an order for return of plaint. It is further contended by Mr. Banerjee, that learned trial court ought to have framed a preliminary issue to determine as to whether the said Court has got territorial jurisdiction or not. It is further contended by Mr. Banerjee that for the sake of argument even if, it is accepted that there is no illegality and/or irregularity in passing the impugned order even then learned trial court is not justified in passing the order impugned overlooking the provision of Order 7 Rule 10 A. It is further argued by Mr. Banerjee that on cursory perusal of the plaint as filed before the learned trial court vis-à-vis the impugned judgment it would reveal that the learned trial court completely misdirected itself in interpreting Section 16 of the Code of Civil Procedure in the facts and context as involved in the said suit. Mr. Banerjee, learned

counsel for the appellant thus submits that it is a fit case for allowing the instant appeal after setting aside the impugned order.

3. Per contra, Mr. Chakraborty, learned counsel for respondent nos. 2 to 7 at the very outset draws attention of this Court to the prayer portion of the plaint as filed in Title Suit No. 1289 of 2022 before the learned trial court. Attention of ours is also drawn to the schedule of the said plaint. It is argued by Mr. Chakraborty that on conjoint perusal of the prayers of the said plaint and the schedule of the plaint it would reveal that the suit property is situated outside the territorial jurisdiction of the learned trial court and that the present appellants /plaintiffs before the learned trial court have sought for a decree for declaration in respect of their right to carry on the construction work over the said property. It is thus argued that in view of the provision of Section 16 of the Code of Civil Procedure learned trial court is absolutely justified in holding that the said Court lacks territorial jurisdiction to entertain the said suit and thus rightly passed the impugned order.

4. For effective disposal of the instant appeal we propose to have a look to the prayer portion of the plaint of Title Suit No. 1289 of 2022 and the same is reproduced hereunder in verbatim:-

“ a. A decree for Declaration against the defendants that the plaintiffs, being owners are entitled to carry on the works of construction of building as per sanctioned plan as has been sanctioned by the K.M.C on the said suit property without any interruption by any of the defendants;
b. A decree of permanent injunction restraining the defendants, their men and agents from interfering with the works of

construction works is being carried on as per sanctioned plan and possession of the plaintiffs on the suit property;
c . Order for Temporary Injunction in terms of the prayer (b) above till the disposal of the suit;
d. Any other relief or relief as the plaintiffs are entitled to in law and as well as in equity.”

5. The suit property as involved in Title Suit No.1289 of 202 and as has been mentioned in the schedule of the said plaint is also reproduced hereinbelow:-

“Premises No.65, Shanti Pally, under K.M.C Ward No.107, being demarcated portion of R.S Dag No. 3727, under R.S Khatian Nos.1931, 1935, 2380, 2609 and 2611 in Mouza-Kasba, J.L No.13, P.S- Kasba, Dist.- South 24 Parganas, containing an area of 21.5 sataks equivalent to 13 Cottahs, which is butted and bounded as follows:-

On the North: Rajdanga Main Road (R.B Connector)

On the South: Premises No.179 & 440, Rajdanga Main Road

On the East: Telephone Exchange at Dag no.3729.

On the West: That Chamber, Unitech.

6. As rightly pointed out on behalf of respondent nos.2 to 7 that on a cursory reading of the prayer portion of the plaint conjointly with the description of the suit property it reveals that in the prayer portion of the plaint, the plaintiffs have prayed for a declaration of his right to carry on the construction over the suit property with a further prayer for permanent injunction restraining the defendants from making interference with such right.

7. At this juncture we consider it necessary to look to the provisions of Section 16 which is reproduced hereunder in verbatim:-

“16. Suits to be instituted where subject-matter situate-

Subject to the pecuniary or other limitations prescribed by any law, suits,-

- a. For the recovery of immovable property with or without rent or profits,*
- b. For the partition of immovable property,*
- c. For foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,*
- d. For the determination of any other right to or interest in immovable property,*
- e. for compensation for wrong to immovable property,*
- f. For the recovery of movable property actually under distraint or attachment,*

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.- In this section “property” means property situate in India.”

8. On perusal of the aforesaid Section it thus appears that it is the intention of the legislatures that for determination of any right or interest in an immovable property a suit shall have to be instituted in the court within the local limits of whose jurisdiction the property situates. Admittedly, the suit property is situated outside the territorial jurisdiction

of the learned trial court over which the plaintiffs have claimed their right to carry construction and therefore the learned trial court is absolutely justified in holding that the said Court lacks territorial jurisdiction to entertain such suit and thus rightly ordered for return of plaint as per the provision of Order 7 Rule 10A of the Code of Civil Procedure.

9. Argument of Mr. Banerjee, learned counsel for the appellants that prior to passing an order for return of plaint, learned trial court is duty bound to comply with the provision of Order 7 Rule 10A CPC appears to be not convincing in view of the fact, the operation of Rule 10A comes into play as and when plaintiffs to a suit file an application under Order 10(2) after passing of an order for return of plaint under Rule 10 of the said Order.

10. In view of the discussion made hereinabove we thus find no merit in the instant appeal

11. Accordingly, the instant appeal is dismissed. Consequently, the order impugned by learned Judge-in-Charge, Bench No.XII, City Civil Court at Calcutta is hereby affirmed.

All interim applications are also disposed of.

12. Considering the facts and circumstances as involved in this appeal, liberty is given to the present appellants to file an application under Order 7 Rule 10A (2) CPC before the learned trial court and on such application being filed learned trial court shall pass appropriate order in view of the provision of Order 7 Rule 10A(3).

13. With the aforementioned observation the instant appeal is disposed of.

14. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree,

(CHITTA RANJAN DASH,J)

(PARTHA SARATHI SEN, J.)