

06.02.2024
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Ct. no. 652
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CO 63 of 2020

**Sri Gulab Chand Gupta @ Golap Chand Gupta
Vs.
Sri Chinmoy Roy Chowdhury & Anr.**

Mr. Ayan Banerjee
Mr. Suman Banerjee ...for the Petitioner

Mr. Anupam Acharya
Ms. Alivia Bhattacharya
...for the Opposite parties

Being aggrieved and dissatisfied with the order no. 11 dated 11.3.2019 passed by learned Civil Judge, (Junior Division), 4th Court, Howrah in Title Suit no. 1374 of 2017, the present application under Article 227 of the Constitution of India has been preferred.

The petitioner's case is that the opposite parties herein instituted aforesaid suit for declaration and injunction against the petitioner herein which was registered as Title Suit no. 1374 of 2017. In the said suit, the petitioner has prayed for declaration that the plaintiffs are absolute owner of the A schedule property and they have a right to enjoy the ring well and water line situated over the 'C' schedule property and that the defendant had no right to obstruct plaintiff's user in respect of ring well and water line situated over the 'C' schedule property. Accordingly, they have also prayed for injunction to that effect. The defendant/petitioner

entered appearance in the said suit by filing written statement and thereby denied all material allegations made in the plaint and it is the specific defence of the defendant that the thika controller has not been made party in the said suit and they have further contended that the aforesaid A and B schedule properties are governed by the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 and accordingly, the suit is barred under Section 21 of the said Act.

The defendant/petitioner accordingly filed an application under Order VII rule 11 (d) read with Section 151 of the Code of Civil Procedure praying for rejection of the plaint. The opposite parties/plaintiffs filed written objection to the said application and after hearing both the parties, learned court below by the impugned order dated 11.3.2019, has been pleased to reject the said application filed under Order VII rule 11 of the Code observing that at the time of considering the application under Order VII rule 11 (d) of the Act, the court is supposed to consider only the averments made in the plaint and the court cannot take into account materials on record to declare that the case of the plaintiff is frivolous or is barred by law.

Being aggrieved by the said order passed by the court below, the petitioner/defendant herein contended that the court below failed to exercise the jurisdiction vested upon him and he has exercised jurisdiction by

not examining the entire plaint. He has practically adjudicated the said issue on a piecemeal reading of the plaint but has not considered documents relied upon by the plaintiff in the plaint which he ought to have considered while adjudicating the application for rejection of plaint under Order VII rule 11 (d) of the Code. In fact, learned court below failed to appreciate the real object of Order VII rule 11 of the code and he should have made a meaningful reading of the entire contents of the plaint and the documents relied upon by plaintiff in support of the averments made in the plaint. Accordingly, he has prayed for setting aside the order impugned.

Learned counsel for the opposite parties submits that the court below was justified in passing the order impugned since the averment of the plaint does not disclose anything that the property in question is a Thika property. Accordingly, he submits that the order impugned does not call for interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties. On perusal of the copy of the plaint, it appears that in the plaint itself, the plaintiffs have referred the documents which he relied in support of averments made in the plaint and the first item of documents that are being relied by the plaintiff is the

deed of partition with plan. In first paragraph of the plaint, plaintiff has stated that he claimed ownership of the suit property on the strength of deed of partition dated 07.04.1980, which he is annexed with the plaint as item no.1 of list of documents. Under order VII, Rule 11, a duty cast upon the court to determine whether the suit is barred by any law or not by scrutinizing the averments in the plaint read in conjunction with the documents relied upon. On perusal of the copy of said deed of partition, it appears that in the partition deed, the property in question has been described as a “Bhogdakhali Thika Jamai Sattwar Basthu Jomi” along with structure standing therein.

Since in the present context, the court below has overlooked the documents annexed with the plaint while disposing of the application under Order VII rule 11 of the Code, the present application being C.O. 63 of 2020 is hereby disposed of with a direction upon the court below to consider the defendant’s application filed under Order VII rule 11 afresh in the context of averments made in the plaint as well as the documents relied by the plaintiffs in the plaint and to dispose of the same preferably within a period of eight weeks from the date of communication of the order.

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

(Ajoy Kumar Mukherjee, J.)