

25.1.2024
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Ct. no. 652
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CO 168 of 2021

Tarak Nath Pramanick
Vs.
Amal Pramanick & Ors.

Mr. Prosenjit Mukherjee
Mr. Saptarshi Chakraborty ...for the Petitioner

Mr. Manas Kumar Das
Mr. Aritra Kumar Thokdar
...for the Opposite parties

Affidavit of service filed by the petitioner is taken on record.

Order no. 84 dated 19th February, 2020 passed by the learned Civil Judge (Junior Division), 2nd Court, Rampurhat, Birbhum in Title Suit no. 157 of 2007 is the subject matter of present application.

Petitioner's case is that the opposite parties/plaintiffs challenging the registered deed of gift dated 10.11.2006, executed in favour of the petitioner/defendant, filed aforesaid suit for declaration and consequential reliefs. The petitioner herein/defendant contested the said suit by filing written statement and specific defence of the defendant is that without assessing actual valuation of the gift deed under challenge, they have assessed the suit according to their own valuation and has deposited the court fee in terms of Section 7(iv)(b) of the West Bengal Court Fees Act,

1970. The petitioner/defendant filed an application before the court below contending that the suit has not been properly valued and the plaintiffs may be directed to pay the ad-valorem court fees on the valuation as made in the deed of gift. The court below while disposing the defendant's application, was pleased to direct the plaintiff to correct the value of the reliefs made in the plaint within one month and to pay the ad-valorem court fees as per valuation of the alleged deed thereof.

Challenging that interlocutory order dated 21st February, 2015, the plaintiff/opposite parties preferred a Revisional application before the learned Additional District Judge, Birbhum under Section 115A of the Code of Civil Procedure and learned court below dismissed the said application on the ground that the court has not vested with the jurisdiction of the Revisional power for interfering the impugned order, which is interim in nature.

It is further submitted that since 15.6.2017, the court below on repeated occasions, has directed the plaintiffs to take steps for payment of ad-valorem court fees but the plaintiffs neither amended the plaint nor they have paid ad-valorem court fees in terms of actual valuation of the gift deed.

In such view of the matter, the court below had asked the plaintiff to file show cause for non-compliance of the earlier orders in connection with the payment of

ad-valorem court fees and further directed to take steps to comply the order and thereby fixed 19th February, 2020 for hearing of the cause shown by plaintiffs. However, in spite of the fact that the plaintiffs have refused to amend the valuation of the suit, learned court below fixed the suit for preemptory hearing with the observation that it would serve no purpose in waiting any further for insertion of the valuation of the suit in the plaint and directed to proceed with the suit upon keeping open the issue of pecuniary jurisdiction of the court on the consequence of the revised valuation of the suit.

Being aggrieved by that order, the defendant/petitioner referred various judgments and contended that the suit is required to be valued in terms of admitted amount received by the plaintiff and plaintiffs were directed to correct the valuation and to pay the adequate court fees but they have not complied the same and as such the plaint is liable to be rejected for non-compliance of the court's order. However, the court below by the impugned order, has asked to proceed with the suit in accordance with law. Accordingly, the petitioner has prayed for setting aside the order impugned and prayed for rejection of the plaint under Order VII rule 11 of the Code.

Learned counsel for the opposite parties submit that they have already deposited the ad-valorem court fees on 11th December, 2018.

Having considered the submissions made by both the parties, it appears from the submissions of the plaintiff that they have deposited the ad-valorem court fee without amending the valuation of the suit, which appears to be irregular.

In such view of the matter, C.O. 168 of 2021 is accordingly disposed of with a direction upon the court below to give an opportunity to the plaintiff to amend the plaint in respect of valuation of the suit within a period of four weeks from the date of communication of the order. In the event of filing such application, the court below will also give an opportunity to the defendant/petitioner herein to file written objection, if any and to dispose of the amendment application in accordance with law. It is further clarified that if the court below pleases to allow any such amendment application and if after amendment, it appears to him that the amended valuation of the suit exceeds the pecuniary jurisdiction of the court below, then he will be at liberty to return the plaint for presentation before the appropriate forum by invoking his power under Order VII rule 10 of the Code of Civil Procedure, otherwise he will try the suit in accordance with law.

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.)