

22.02.2024
Sl. No.261(DL)
srm

C.O. No. 468 of 2024
Tyab Khan @ Taiyab Khan
Versus
Sahabana Khatun & Ors.

Mr. Arup Krishna Das

...for the Petitioner.

The revisional application has been filed challenging an order dated January 24, 2024 passed by the learned Civil Judge (Junior Division), 3rd Court at Asansol, Paschim Bardhaman, in Title Suit No.107 of 2015.

By the order impugned, the learned Judge rejected an application under Order VII Rule 11 of the Code of Civil Court. The learned court was of the view that the issue whether the defendants were in exclusive possession of the suit property or whether the plaintiff and the defendants together were in possession of the suit property, could not be adjudicated without leading evidence. At the nascent stage, the plaint could not be rejected. The learned court was of the view that the application was filed at the stage of evidence of DW, only to cause unnecessary delay.

Learned Advocate for the petitioner submits that in a suit for declaration of title and permanent injunction, a prayer

for recovery of possession is essential. Without such prayer, the suit would be barred under the Specific Relief Act.

This Court finds that in paragraph 5 of the plaint, a specific averment has been made that the plaintiff and her husband, out of good gesture and love and affection had permitted the defendants to reside in the suit premises along with them. The defendants had been creating unnecessary disturbance. They caused interference with the plaintiff's enjoyment of the suit property. Hence, the suit was filed.

I do not find any illegality in the order impugned. The plaint case is that the defendants were relatives of the plaintiff and the plaintiff had permitted the defendants to reside with the plaintiff in the suit property. The plaint indicates that the plaintiff is in possession of the suit property. Here, a prayer for recovery of possession would not be necessary. Whether the plaintiff is actually in possession or not, is a triable issue only then can the court decide whether the suit should fail in the absence of such prayer. A complete and meaningful reading of the plaint, does not indicate that the suit is barred by any law.

Accordingly, the revisional application is dismissed.

There will be, however, no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)