

Item No.1
09.02.2024
Court. No. 19
GB

C.O.796 of 2023

Dilip Kumar Lakra
VS
Shibram Sardar @ Khalko & Ors.

*Mr. Tanmoy Mukherjee,
Mr. Iresh Paul,
Mr. K.R. Ahmed,
Mr. Soumyadip Panda*

...for the Petitioner.

*Mr. Subir Banerjee,
Ms. Dipanwita Das*

...for the Opposite Party/Plaintiffs.

1. The revisional application arises out of an order dated January 20, 2023, passed by the learned Civil Judge (Junior Division), Balurghat, Dakshin Dinajpur in Title Suit No.47 of 2019. The revision has been filed by the defendant no.3 in the suit.
2. By the order impugned, the learned court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure filed by the defendant nos.2 and 3 in the suit. According to the defendant nos.2 and 3, the suit was not maintainable as it was barred by the principles of res judicata. The plaintiffs had come with unclean hands by suppressing material facts and also the decision of the High Court in SAT 168 of 2017 with CAN 4434 of 2017 dated March 20, 2019.
3. According to the said defendants, the subsequent suit for declaration of the shares of the plaintiff in respect of the self-same property was barred. The High Court had passed an order that only in the event Title Suit No.39 of

2010 was decreed in favour of the plaintiffs, would the plaintiffs be at liberty to apply afresh for partition of the suit property. Unless it was specifically pleaded and disclosed that Title Suit No.39 of 2010 had been decreed in favour of the plaintiffs, the plaint was liable to be rejected.

4. The learned court rejected the application under Order 7 Rule 11 of the Code of Civil Procedure, on the ground that the plaint, read as a whole, disclosed a cause of action to file a partition suit. The court was of the view that the plaint could not be rejected on the basis of the averments made by the defendant either in the written statement or in the application for rejection of the plaint. All that the court was required to see was, whether a meaningful reading of the plaint would disclose that the plaintiffs had been able to establish that there was a right to sue.
5. In my opinion, the learned court proceeded on the basis of the correct principles of law governing the principles of rejection of a plaint. The court was only required to adjudicate whether the plaint disclosed a cause of action or whether the suit was barred by law. The suit is for declaration of shares of the plaintiffs and permanent injunction. The plaintiffs have narrated how they had right, title and interest over a portion of the suit property and how the usufruct of the pisciculture going on in a pond, which was a joint property of the parties, should be shared amongst the parties. They prayed for fishing rights as joint owners of the pond. Permanent injunction

restraining the defendants from taking over possession of the entire property, to the detriment of and in denial of the interest of the plaintiffs, was also claimed. In my opinion, the plaint read as whole, discloses a cause of action. It does not appear to be barred by law. Even if, the plaintiffs do not have a chance of success in the suit, that would not be a ground for rejection of the plaint. Under such circumstances, the order impugned is upheld.

6. There is another aspect in this matter. It appears from the records that a partition suit was filed in 2003. The said suit was dismissed. The plaintiffs ultimately came up to the High Court in a second appeal. The second appeal was disposed of with the observation that in case Title Suit No.39 of 2010, in which the plaintiffs had challenged the deeds on the basis of which the defendants had acquired right, title and interest of the property in question, was decreed in favour of the plaintiffs, the plaintiffs would acquire the right to file a fresh suit for partition. Admittedly, there was already a litigation between the same parties in respect of the self-same property. The instant suit has been filed again, for declaration that the plaintiffs have a share in the property and they also have a share in the pisciculture which is going on in the pond, as joint owners thereof. The plaint is silent about the orders passed in the earlier rounds of litigation and also the order passed by the High Court.
7. Thus, whether the suit is maintainable in its present form, in spite of the judgment of the High Court in SAT

168 of 2017, ought to be decided. Prolonged litigation will unnecessarily burden the court. If it found that the suit is not maintainable in its present form, due to suppression and violation of the order of the High Court, it would be of no use to burden the civil court with the adjudication of the suit.

8. The defendant nos.3 and 4 will file the written statement within a period of two weeks from date, if not already filed. To avoid wastage of time, this court allows belated filing of the written statement. This order will shorten the litigation, which will also enure to the benefit of the plaintiffs. Every party is benefited if the litigation is expedited, especially the plaintiffs. Upon acceptance of the written statement, learned trial judge will frame preliminary issues as to whether the suit was liable to be dismissed on account of suppression, principles of res judicata and violation of the order of the High Court. The learned court will proceed to decide the issues in accordance with Order XIV Rule 2. Order XIV Rule 2 Code of Civil Procedure read as follows:-

2. Court to pronounce judgment on all issues. - (1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that

purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

9. If the court finds that the issue cannot be disposed of without elaborate trial and must be decided as a main issue, necessary order with reasons shall be passed, and the issues shall be decided in the suit.
10. The adjudication on the basis of this order shall be completed of within two months from framing of the issues.
11. Accordingly, the revisional application is disposed of.
12. However, there will be no order as to costs.
13. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)