

Ct. 22.01
No. 652 2024
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C.O. 653 of 2021
Malay Kumar Mondal
-Versus-
Palan Chandra Nayak & Ors.

Mr. Saunak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder **...For the Petitioner**

Service of notice upon the Ms. Basanti Saren,
learned Counsel for the opposite parties is taken on record.

Opposite parties are not represented.

Order being No. 23 dated 16th January, 2020
passed by the learned Civil Judge (Junior Division), 4th
Court at Alipore, in Title Suit No. 164 of 2017 is under
challenge in the present application.

The petitioner contended that the opposite party
herein as plaintiff had filed aforesaid suit for declaration
praying that the sale deed executed by Joyram Nayak as
legal guardian of Palan Chandra Nayak in favour of Ganesh
Chandra Mondal on 15th June, 1962 is void ab initio and for
a further declaration that the plaintiff is the lawful owner of
the said property and for a decree for permanent injunction.

The petitioner as defendant appeared in the said
suit and filed an application under Order VII Rule 11(d) of
the Code of Civil Procedure, inter alia praying for rejection
of plaint of the suit being barred by limitation. The opposite
party herein contested the said application by filing written

objection. The Court below by the impugned order has disallowed the defendants prayer for rejection of plaint.

Being aggrieved by that order Mr. Sounak Bhattacharya, learned Counsel appearing on behalf of the petitioner submits that the order impugned was passed without proper application of judicial mind and he has acted illegally and with material irregularity by not allowing the application filed by the petitioner under Order VII Rule 11(d) of the Code.

He further submits that on plain reading of the averments made in the plaint disclose that the suit is barred by limitation. Accordingly he has prayed for setting aside the order impugned.

In this context learned Counsel relied upon a decision of the Hon'ble Apex Court in the case of Madhukar Vishwanath Vs. Madhao and Ors. reported in (1999) 9 SCC 446 and contended that the period of limitation for filing of suit began on the date of attaining majority and the suit ought to have filed within three weeks from the date of attaining majority in terms of Article 60 of the Limitation Act.

I have considered the submissions made by Mr. Bhattacharya, learned Counsel appearing on behalf of the petitioner and on perusal of the order impugned it appears

that the plaintiff has prayed for declaration that the sale deed executed by Joyram Nayak as legal guardian of Palan Chandra Nayak in favour of Ganesh Chandra Mondal on 15th June, 1962, is a void transaction.

The plaintiff in his plaint has not disclosed when majority had attained but he has only stated in his affidavit annexed to the plaint and which was affirmed in January, 2017 that he is aged about 75 years as on date of filing of the suit. On perusal of the averments made in the plaint it further appears that the plaintiff has disclosed in paragraph 12 that very recently plaintiff came to know from the whispering of the village people that the defendant No. 1 mutated his name before the competent authority on the basis of fictitious deed executed by Jayram Nayak on 15th June, 1962 to Ganesh Chandra Mondal and subsequently the heirs of Ganesh Chandra Mondal sold the suit property to defendant No. 1 on 20th December, 2006 and on the basis of mutation certificate issued by defendant No. 3 in favour of the defendant No. 1, the defendant No. 1 and his men and agents are trying to forceable dispossess the plaintiff from the suit property which compelled the plaintiff to file the present suit for decree of declaration.

Learned Court below while deciding the said issue observed that while considering the application under Order

VII Rule 11(d) the Court is required to restrict itself to the plaint and annexures thereto for ascertaining as to whether the plaint is liable to be rejected as it is barred by Section 80 of CPC or Section 17 of the Limitation Act or Article 56 of the Limitation Act and cannot consider any other document or material beyond the averments made in the plaint. The Court below came to a finding that the question of rejection of plaint for non-service of notice under Section 80 of the Code of Civil Procedure does not arise in the present context since the plaintiff has not sought for any relief and he further held that whether Section 17 of the Limitation Act or Article 56 of the Limitation Act has complied or not that can be adjudicated at the time of final hearing of the suit and the question of payment of Court fees can also be adjudicated after framing of preliminary issue as to whether the suit is under valued or not.

I do not find any perversity or illegality in the aforesaid order impugned which speaks that the averments made in the plaint is germane and when the Court below has kept open for adjudication, the issue as to whether the suit is barred under the provisions of Limitation Act for final adjudication, since such question involves both question of law and fact.

In fact the order impugned passed by the trial

Court has not resulted in any gross and manifest failure as justice nor the Court below has assumed a jurisdiction which it does not have or grave injustice has occasioned, specifically when substance of the order passed by the Trial Court is any interim in nature and subject to final adjudication and other considerations as also objections as already raised by the petitioner hereinabove.

In such view of the matter, the order impugned does not call for any interference invoking jurisdiction of the Court under Article 227 of the Constitution of India.

The revisional application, being C.O. 653 of 2021 is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)