

January 31st, 2024
Court No. 19

CO/979/2023

Janmabhumi Buildcon LLP and another

Vs.

Mr. Sajahan Mondal and others

Mr. Aniruddha Chatterjee
Mr. Siddhartha Banerjee
Mr. Rahul Karmakar
Mr. Abhisek Baran Das
Ms. Srijoni Chongdar ...for the Petitioners

Mr. Supratick Syamal
Mr. Dilip Kr. Syamal
Mr. Gourab Ghosh
Mr. Somosreedeb Dutta
Mr. Renesh Dey ...for the Opposite Party

1. The defendant Nos. 2 to 8 in Title Suit No. 146 of 2021, has preferred this revisional application, being aggrieved by the order dated January 21, 2023. The order was passed by the learned Civil Judge (Senior Division), 2nd Court at Baruipur.

2. By the impugned order, the learned trial court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure.

3. The defendant Nos. 2 to 8 filed the application for rejection of the plaint on the grounds that the plaint did not disclose any cause of action; the suit was barred for misjoinder of causes of action; as defendants were in physical possession of the property in question, the suit would be not maintainable without a prayer of recovery

possession; the plaint suffered from misrepresentation and the proceeding initiated before the Block Land and Land Reforms Officer as also the West Bengal Land Reforms and Tenancy Tribunal by the plaintiff, has been suppressed; that the issues raised with regard to the defendant Nos. 2 to 8 of having recorded their names in the land revenue records, could not be agitated in a civil suit; and the suit was barred by law as the learned trial judge could not grant the reliefs, prayed for.

4. The plaintiffs filed their written objections to the said application and *inter alia*, denied the contents thereof.

5. Mr. Aniruddha Chatterjee, learned advocate for the petitioners submits that the plaint should be rejected as the plaint did not disclose any cause of action against the defendant Nos. 2 to 8. Secondly, the suit was barred by law. The allegation that the defendant Nos. 2 to 8 had their names wrongly recorded in the land revenue records, could not be entertained by a civil court. The proper remedy of the petitioner would be before the West Bengal Land Reforms and Tenancy Tribunal. A civil suit was barred as per the provisions of the West Bengal Land Reforms Act, 1955.

6. Mr. Chatterjee, further contends that the plaintiffs had already initiated proceedings before the Block Land and Land Reforms Officer, for correction of the record of rights and such application was rejected. This aspect had

been suppressed in the suit and the plaint should also be rejected not only on the ground of being barred by law, but also on account of suppression of materials facts. The Court fees paid were insufficient. The suit for partition, against non co-sharers, namely, the defendant Nos. 2 to 8, was not maintainable.

7. Mr. Chatterjee relies on the decision of this Court in the matter of *State Trading Corporation of India Limited and another vs. Glencore Grain B. V.* reported in 2015 SCC OnLine Cal 507 and submits that if fraud and misrepresentation are apparent from the records, the trial Court could also look into the documents of the defendants and other ancillary documents, in order to decide whether the plaint should be rejected or not. Further reference is made to the decision of the Hon'ble Apex Court in the matter of *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)* reported in (2020) 7 SCC 366. Taking support from such decision, the learned advocate relies on the deed of conveyance, the proceedings before the authority being Misc Petition 226 of 2019 and LR Appeal Case No. 230 of 2021 and emphasizes that the deed of conveyance by which the defendants were transferred the suit property had not been challenged by the plaintiffs. On the other hand, the plaintiffs filed the suit for partition against the present owners of the property, who were not co-sharers of the plaintiffs.

8. Heard learned advocate for the respective parties. The suit for partition and permanent injunction was filed by the plaintiffs, claiming 71.43 % in the suit property. According to the plaintiffs, the defendant No. 1 had the remaining 28.57% share in the suit property. The plaintiffs prayed for a preliminary decree, upon declaration of such shares and further final decree upon apportionment of shares in metes and bounds as per the declared shares. The contentions of plaintiffs in the suit were that the suit property 'Ka' was situated within the jurisdictional limits of the learned trial judge. The suit property consisted of 65 decimals in CS and RS Dag No. 197 corresponding to LR Dag No. 282. Such plots corresponded to LR Khatian Nos. 489, 490, 491, 492, 493, 494, and 675. The suit property is situated in Mouza, Raghabpur, under Police Station Sonarpur. The suit was valued at Rs. 90,000/- for partition and Rs. 100/- for permanent injunction.

9. According to the plaintiffs, the 'Ka' schedule property belonged to one Kochimuddin Mondal (since deceased). Kochimuddin was enjoying the same as absolute owner thereof. Kochimuddin expired, leaving behind his only son Jalal Rahman Mondal (since deceased). Jalal Rahman Mondal expired, leaving behind three sons and a daughter, namely, Jalil Rahman Mondal (since deceased), Sajahan Mondal (plaintiff No. 1), Khalil Mondal (defendant No. 1) and Hazra Mondal (plaintiff No. 2). Jalil Rahman Mondal

one of the sons of Jalal Rahman Mondal expired, leaving behind wife, four sons and three daughters, namely, Shahida Mondal, Rajjak Mondal, Rejjak Rahaman Mondal, Ramzan Mondal, Reajul Mondal Rehana Bibi Molla Sekh Rabia and Rubiya Sekh (plaintiff Nos.3 to 10). Neither Kochimuddin Mondal nor any of his heirs had ever transferred any property to any other person. However, it was detected that in the LR Khatian, the defendant Nos. 2 to 8 had incorporated their names in the land record in collusion with the employees of the concerned Block Land and Land Reforms Office. The defendant No. 1 was trying to raise construction on the better portion of the suit property and had collected the materials for the said purpose. The plaintiffs had filed their complaints before the police station. The plaintiffs had also recorded that they initiated proceedings for correction of record of rights. Thus, the Collector of the 24 Parganas and BL & LRO's Sonarpur were impleaded as proforma defendant Nos. 7 and 8. The 'Ka' scheduled property was being enjoyed by the plaintiffs and the defendant No.1 as per their shares, i.e., the plaintiffs had 71.43% and the defendant No. 1 had 28.57 % in the entire suit plot. The defendant Nos. 2 to 8 did not have any right, title and interest in respect of property in question. However, in connivance with the defendant No. 1 they were trying to disturb the possession of the plaintiffs in respect of the property in question and were also trying to raise construction on the lands being enjoyed by the

plaintiffs. Due to such illegal activities of the defendants and the continuous intimidation and threats of the defendants, the plaintiffs requested the defendant No. 1 to partition the suit property amicably, in accordance with the shares of the respective parties. The defendant No. 1 did not pay any attention to such request.

10. Under such circumstances, the plaintiffs and defendant No. 1 were enjoying the property, when the defendant No. 1, who was acting at the instigation of the defendant Nos. 2 to 8, tried to deprive the plaintiffs of their legitimate shares in the property in question, the suit was filed for partition and permanent injunction. The averments were that defendant No. 1 refused to cooperate and refused to partition the property by demarcating the same as per the shares. Permanent injunction was prayed for on the allegation that the defendants Nos. 2 to 8 had been disturbing the plaintiffs and collecting building materials.

11. The plaintiffs also prayed for an ad interim order of injunction, by filing an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure. The learned Trial judge, upon hearing the parties, directed that both the parties should maintain *status quo* with regard to nature, character and possession of the suit property. The petitioners thereafter, filed an application for rejection of the plaint. The grounds for rejection as stated by the defendant Nos. 2 and 3, have been discussed earlier.

12. This court is of the view that the learned trial judge rightly passed the order impugned. The learned judge came to the conclusion that the contentions of the petitioners in their application under Order 7 Rule 11 of the Code of Civil Procedure, were questions of fact. Such issues were to be determined on a full fledged trial, upon evidence to be adduced by the parties. The allegation that the plaint was barred by the laws of limitation were also found to be mixed questions of law and fact, in this case.

13. According to the learned court, the plaint disclosed a cause of action. The plaint read as a whole, indicated that a case had been made out for partition and permanent injunction. One or two sentences or passages from the plaint, could not be taken out of context and read in isolation. Cause of action was a bundle of facts, which were to be proved in evidence and the court was required to go through the materials and determine the issues involved in this case.

14. A meaningful reading of the plaint in this case, discloses how the plaintiffs claim 71.43% of 'Ka' schedule property as their inherited property from their ancestor. The plaintiffs also accept the claim of the defendant No. 1 in the remaining 28.57% of the 'Ka' schedule. The plaintiffs have disclosed that they came to know that the defendant Nos. 2 to 8 had recorded their names in the LR records. In connivance with the defendant No. 1, the said defendants

were trying to dispossess the plaintiffs and encroach into the portion being enjoyed by the plaintiffs since long. Accordingly, the plaintiffs requested the defendant No. 1 for an amicable partition. It has been categorically and specifically averred in the various paragraphs of the said plaint, that the defendant Nos. 2 to 8 did not produce any deed of sale in respect of the suit property, during any earlier proceeding. As there are allegations of disturbance against the defendant was 2 to 8, the relief of permanent injunction was also claimed.

15. Under such circumstances, this court does not find that the plaint is of such a nature, that it should be thrown out at the very inception. The allegation of suppression of proceedings before the land authority, is incorrect. The plaintiffs have also stated that no deed or instrument, had been disclosed by the defendants in any such proceeding, on the basis of which, they could claim any interest in the property in question. In any event, land records are also not conclusive proof of title. The plaintiffs' case is that the property was not demarcated between the plaintiffs and defendant No. 1. A partition suit is, *prima facie*, maintainable. Secondly, the prayers in the plaint do not indicate that any relief with regard to the issues triable by the West Bengal Land Reforms and Tenancy Tribunal has been claimed by the plaintiffs. The plaintiffs pray for a preliminary decree, declaring their share in the suit

property amounting to 71.43% and the share of the defendant No. 1 of 28.57% and for a final decree, upon apportionment of the shares by metes and bounds. The decision in *Glencore Grain B.V. (supra)* does not apply in the facts of this case. The contentions of Mr. Chatterjee that on the basis of the said decision, the learned trial judge was bound to look into the materials produced by the defendant Nos. 2 and 3 for rejection of the plaint, cannot be accepted.

16. In the case before His Lordship, the foundation of the suit was the pendency of the arbitral proceedings in a foreign country. The cause of action in the suit was based on initiation of an arbitral proceeding in a foreign location. His Lordship held that it was not open for a party to file a suit, touching upon the merits of an arbitration proceeding. The said suit was barred under the provisions of the Arbitration and Conciliations Act, 1996 and thus, His Lordship was of the view that documents could be looked into in such an exceptional situation.

17. It is the plaint case, that the plaintiffs and the defendant No.1 were enjoying the entire 'Ka' schedule property, by constructing their respective dwelling houses, as per their shares, but the defendant Nos. 2 to 8, in connivance with the defendant No. 1, were trying to disturb the possession of the plaintiffs and were also trying to construct on the better portion of the undivided suit plot.

18. Decision in *Dahiben (supra)* will also not apply in this case as the said decision was rendered in a situation when a deed of sale was challenged after five and half years from its execution, by the person who executed the deed and had also accepted part consideration.

19. This Court has to find out whether the plaint discloses a real cause of action or an illusory cause of action has been created by clever drafting. Court's have to be vigilant in case of camouflage or suppression. If the suit is found to be vexations and filed in abuse of process of court, the drastic power under Order 7 Rule 11 of the Code of Civil Procedure can be invoked in order to reject the plaint. However, only because the suit may not succeed or there are loose ends in the pleadings, those will not be grounds for rejection of the plaint. There is always a scope for amendment if facts disclosed in the written statement require additional pleadings and prayers.

20. The plaintiffs have categorically mentioned how and when the right to sue and the cause of action accrued, which compelled the plaintiffs to file a suit for partition. Only because it is mentioned that the defendant No. 2 to 8 had got their names recorded in the record of rights and the plaintiffs had approached the appropriate authority for cancellation of the record of rights, such averment would not amount to passing an order of rejection of the plaint on the ground that suit was barred by law. The cause of action

has been pleaded in paragraph 11 of the plaint. The plaintiffs have not claimed any reliefs in respect of the record of rights which they have challenged in a separate proceeding. It is for the plaintiffs to prove their 71.43% share in the suit property, upon evidence. The defendants are also entitled to prove the contrary on the basis of their documents and evidence.

21. Reference is made to the decision in **G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Others** decided in **Civil Appeal No.- 2737 of 2023**. The Hon'ble Apex Court held as follows:-

“6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose cause of action.

8. The learned counsel appearing for the second and third respondents vehemently submitted that on a plain reading of the plaint, it is crystal clear that cause of action is not disclosed. Therefore, we have perused the plaint. After having perused the plaint and in particular paragraphs 16 and 17, we find that the cause of action for filing the suit has been pleaded in some detail. It is pleaded how the first appellant acquired title to the property. The facts constituting alleged cause of action have been also incorporated in paragraph 17.

9. We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The 6 question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter.”

22. Finally, if there is any doubt as to whether the plaint should be rejected or not, the benefit of doubt should be given to the plaintiff.

23. In the decision of **Jageshwari Devi and ors. vs. Shatrughan Ram** reported in **(2007) 15 SCC 52**, the Hon’ble Apex Court held as follows:-

“3. We have heard learned counsel for the parties. We have perused the order of the trial court and of the High Court. We have also perused the plaint filed by the respondent herein. The main ground on which rejection of the plaint was sought was that the plaint does not disclose a cause of action which is a ground specified under Order 7 Rule 11(a) CPC. The trial court on consideration of the averments in the plaint held, and in our view rightly, that it could not be held that the plaint does not disclose a cause of action. It is relevant to state that there is a difference between the non-disclosure of a cause of action and defective cause of action: while the former comes within the scope of Order 7 Rule 11, the latter is to be decided during trial of the suit. The contention raised on behalf of the appellant that the cause of action disclosed is vague and incomplete, is not a ground for rejection of the plaint, under Order 7 Rule 11 CPC no exception can be taken to the order.”

24. Under such circumstance, I do not find any reason to interfere with the order impugned. The revisional application is dismissed. The learned trial judge is directed to proceed with the suit expeditiously and dispose with the same within a year, peremptorily.

25. However, there shall be no order as to costs.

26. All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)