

25.06.2024
14
Ct. no. 237
sb

CO 926 of 2021

**Nilanjan Bera
Vs.
Smt. Bharati Mettya & Ors.**

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder

....for the Petitioner

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R. Ahmed
Mr. Rudranil Das
Mr. Soumava Santra
Mr. Tapan Chatterjee

...for the O.P. no. 2

Being aggrieved and dissatisfied with the order no. 214 dated 15th March, 2019 passed by the learned Civil Judge (Junior Division), 2nd Additional Court, Contai, Purba Medinipur, the present application has been preferred.

It is submitted that before the trial court, the opposite parties herein as defendants filed an application under Order VII Rule 11(b) (e) & (f) of the Code of Civil Procedure seeking rejection of the plaint, on the ground of improper valuation of suit and for non-filing of plaint in duplicate and for non-compliance of order VII, Rule 9 of the Code.

The petitioner herein contested the said Application by filing written objection. The learned

Trial Judge by the order no. 213 dated 9th March, 2021, was pleased to pass an order directing the Sherestadar to verify and give a report regarding the payment of court fees by the plaintiff in respect of both the original plaint and the amended copy of the plaint dated 18.6.2018. However, learned Trial Judge was pleased to defer the application under Order VII rule 11 of the Code.

The petitioner states that the learned trial Judge by an order being no. 214 dated 15.3.2021 was pleased to hold that in terms of report of Sherestadar, a deficit court fees of Rs. 88/- was not paid by the petitioner. The petitioner was further directed to put the deficit court fees on the amended plaint. Learned Trial Judge was also pleased to direct the petitioner to file duplicate copy of plaint under Order VII rule 11(e) of the Code.

Being dissatisfied with the order, the petitioner herein submits that the learned trial Judge has acted illegally and with material irregularity in holding that the plaintiff is required to file the plaint in duplicate in terms of Order VII rule 11(e) of the Code without considering that the provision contained in Rule 11(e) & (f) was introduced by the Civil Procedure Code (Amendment) Act 1999 and it was given effect on and from 1st July, 2002, but the instant suit was filed in the year 2000 and further erred in not considering that

the principal prayer in the suit is for declaration of title and recovery of possession, which is consequential relief flowing from main relief and as such plaintiff is not required to value the suit on the basis of market value of the property and the court fees to be paid according to own valuation of plaintiff and accordingly, the defendant's prayer for rejection of plaint does not have any substance in the present context.

Mr. Mukherjee, learned counsel for the opposite party concedes to the fact that the suit was filed in the year 2000 whereas the amended provision in connection with Order VII rule 11 (e) & (f) of the Code came into force with effect from 1st July, 2002 and as such said provisions are not applicable in the present context.

In such view of the matter, the defendant's prayer for rejection of plaint on the ground of Rule 11(e) & (f) of Order 11 may not arise in the present context and as per Sherestadar's report, plaintiff has already been directed to file deficit court fee on the original plaint and plaintiff/ petitioner was further directed to put deficit court fee on amended plaint, by which plaintiff incorporated prayer for recovery of possession, after making proper valuation.

Accordingly, I do not find any perversity in the order impugned, asking for making proper valuation of suit, if not already made, and to pay further court fee,

if any. However direction to file duplicate copy of plaint in terms of order VII, Rule 11 (e) is redundant in the present context. The application under Order VII Rule 11 of the Code has practically become infructuous at this stage in view of direction passed in the impugned order. The court below is directed to proceed with the suit as expeditiously as possible.

C.O. 926 of 2021 accordingly disposed of.

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.)