

February 29, 2024
Sl. No.10
Court No.19
s.biswas

CO 1080 of 2022

Gitasree Das and another

vs.

Nupur Kumar Das

Mr. Bhaskar Chakraborty

Mr. Subrata Mukherjee

... for the petitioner

Mr. Sagarmay Ghosh

... for the opposite party

The revisional application arises out of an order dated January 6, 2022 passed by the learned Civil Judge (Junior Division) at Bidhannagar, North 24 Parganas, in connection with Title Suit No.158 of 2021.

By the order impugned, the learned court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure. The petitioners as defendants filed the said application. The application was not allowed, inter alia, on the ground that a meaningful reading of the plaint would indicate that the suit was maintainable. The opposite party/plaintiff filed a suit for declaration and permanent injunction. The plaintiff claimed that he and his father jointly purchased the house. He paid a sum of Rs.10,000/- at the time of purchase of the house and his father paid the remaining Rs.1,50,000/-. The property was purchased in the mother's name by the father. The property was not purchased by the mother, who neither had income of her own nor any stridhan

property. The plaintiff filed the suit against the mother and the sister praying for a declaration that the Schedule B of the property was under his exclusive possession and the defendants should not encroach into the said portion or dispossess the plaintiff from the said property.

The plaintiff/opposite party further stated that the defendant no.2, that is, the sister was married to a Bangladeshi national, she was living with the mother with her children and instigating her mother to throw out the plaintiff. The plaintiff resides in the suit premises with his wife and son. An ejectment suit was filed by the petitioner No.1, against the plaintiff and his wife. Proceeding under the Protection of Women from Domestic Violence Act, 2005 was also filed against the opposite party. The petitioners constantly disturbed the opposite party and were also damaging and destroying the B schedule property.

Learned advocate for the petitioners submits that the petitioner can claim eviction of the son from the premises under the Maintenance and Welfare of Parents and Senior Citizen Act, 2007 (hereinafter referred to as the Act of 2007). The suit was filed in violation of Section 27 of the said Act of 2007. Section 27 of the said Act of 2007 barred any suit with regard to any matter which was

covered by the Act of 2007. It appears to the court that a letter, not in Form A of the Rules, under the said Act was filed. The same was rejected. An appeal therefrom is pending. At this stage, the suit of the opposite party, cannot be said to be barred by law. These issues are not a part of the plaint. Moreover, in a case for rejection of a plaint, the plaint case, as a whole has to be looked into. The documents of the defendants or the statements in the application for rejection of the plaint, cannot be looked into. Only the plaint case would be relevant.

Reference is made to decision of **G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.** 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 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.”

In the decision of ***Kamala and ors. vs. K.T. Eshwara Sa and ors.***, reported in **(2008) 12 SCC 661**, the Hon’ble Apex Court held as follows:-

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

Be that as it may, if the petitioner no.1/mother, is successful in obtaining any order in the proceedings under the said Act of 2007, which is likely to make the suit not maintainable,

the same can be brought on record in the title suit in a proper manner and the issue shall be decided accordingly, at the appropriate stage.

At this stage, the defence case is not to be looked into. Only the plaint case, as it stands, should be considered. All that is required to be seen is whether the suit discloses a cause of action and whether the suit is ex facie barred by law. I find that the plaint discloses a cause of action and the reliefs are not ex facie barred by law. However, the maintainability of the suit will be decided as one of the main issues in the suit. The suit shall be disposed of within a year from date, mandatorily.

The revisional application stands disposed of.

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

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)