

01.02.2024
Ct. No. 19
Sl. No.04
Cp

C.O. No. 1106 of 2022

Sri Surajit Chakraborty
Vs.
Sri Dinesh Kumar Agarwalla & Ors.

Mr. Sibasis Ghosh

.....for the petitioner.

Mrs. Shohini Chakraborty
Ms. Prajaaini Das

.....for the opposite parties.

1. The revisional application arises out of an order dated February 2, 2022, passed by the learned Additional Civil Judge (Junior Division), 3rd Court, Alipore in Ejectment Case No. 10 of 2013. By the order impugned, the learned court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure. The said application was filed by the defendant/tenant on April 1, 2021.
2. According to the defendant (petitioner herein), the suit property was a thika property and the dispute could not be decided by the learned Civil Judge. The suit was barred under the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.
3. The plaintiff opposed such application on the ground that when the plaintiff acquired the suit property, Calcutta Thika Tenancy had not come into force and

the property had not vested with the State of West Bengal. Thus, the suit was not barred.

4. Mr. Ghosh, learned advocate appearing on behalf of the petitioner/tenant, submits that when the suit was remanded for retrial, the defendant had ample opportunity to pray for rejection of the plaint as the remand was 'open'. All issues were kept open to be decided by the learned Trial Judge and at that stage, the application for rejection of the plaint was maintainable. He has relied on several decisions of the Hon'ble Division Bench of this Court in support of his contention that, irrespective of when the plaintiff had acquired the suit property, once the property sold was a thika property, the property continued to be a thika property and would be governed by the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001. The question whether the property sold is a Thika property or not, was also to be decided by the Thika Controller.
5. Ms. Chakrabarty, learned advocate for the plaintiff, submits that the learned lower appellate court had directed the suit to be tried afresh on all the issues, including the issue as to whether the acquisition of the property in 1981, would exclude the property from the purview of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 or whether the

suit would be barred by the provisions of the said law, irrespective of the date of acquisition. Such issue will be tried in the suit, upon further oral and documentary evidence to be adduced by the parties.

6. Having the learned advocates for the respective parties. Undoubtedly, the question of maintainability of the suit was decided by the learned Trial Judge and the suit was dismissed. The learned court, upon hearing the parties, came to the conclusion that the suit had been dismissed earlier on the ground that it was not maintainable. An appeal was preferred on various grounds. The learned Additional District Judge, Fast Track, 2nd Court, Alipore, remanded the suit by way of an open remand for hearing the suit afresh, with a direction upon the learned Trial Judge to deal with all possible questions which would arise during the trial.
7. The lower appellate court was of the view that it was a fit case for exercise of the power of remand as there was every possibility of adducing further evidence in the suit. The learned lower appellate court, requested the learned Trial Judge to rehear the suit after affording opportunity to both the sides, by leading oral and documentary evidence.
8. The trial court was of the view that once the superior court had given a direction to rehear the matter upon

allowing the parties to adduce further evidence, the application under Order 7 Rule 11 of the Code of Civil Procedure should not be entertained as the grounds agitated in the application under Order 7 Rule 11 of the Code, would be adequately dealt with in the trial.

9. The learned Additional District Judge, Fast Track, 2nd Court, Alipore upon considering the submissions of the respective parties, arrived at the conclusion that the photocopy of the deed of sale bearing No.8482 dated January 16, 82, would indicate that the suit property was purchased before the Calcutta Thika and Other Tenancies & Lands (Acquisitions and Regulation) Act, 1981 was notified. Thus, the right of the landlord, prima facie, had not vested in the State. The said aspect was not looked into by the learned Trial Judge in the first round of litigation. Moreover, the learned lower appellate court was also of the view that the issue of the suit being barred by the provisions of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, had not been framed.

10. In my opinion, the arguments advanced by Mr. Ghosh are with regard to the propriety of the order of the learned lower appellate court. Such order was not challenged. The learned lower appellate court directed all the issues to be retried afresh upon allowing both

the parties to adduce oral and documentary evidence. Once such order of open remand was passed, implication of the order of the learned lower appellate court was that the suit should be 'tried' afresh on the issues framed and each of the issues should be decided at the trial. The scope of praying for rejection of the plaint at this stage is not open.

11. However, as maintainability of the suit is already an issue, the same shall be decided on the basis of the submissions of the parties with regard to the effect of the Calcutta Thika and Other Tenancies Act, 1981, and the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001, in the present suit. The suit shall be disposed of afresh, upon taking note of the submissions made by the petitioner herein and also the rival contentions of the plaintiff. The suit is of 2004 and the learned Trial Judge is requested to dispose of the suit within a period of six months from the date of communication of this order.
12. Parties are given one last opportunity to adduce further oral and documentary evidence which should be completed within a period of two months from date.
13. Even if the plaintiff raises important questions of law, this court, under the facts and circumstances, stated hereinabove, cannot sit in appeal over the order of

the learned lower appellate court. Deciding the prayer for rejection of the plaint on the ground that the suit is barred by the provisions of the Thika Tenancy Act, would amount to interference with the order of the learned lower appellate court.

14. The revisional application is accordingly disposed of.

There shall be no order as to costs.

15. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)