

20.3.2024
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Ct. no. 652
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CO 1113 of 2017

Mrs. Kiran Singh
Vs.
Sri Bhagyadhar Naskar

Mr. Nilanjan Bhattacharjee
Mr. Arpan Guha
Mr. Abhilash Chatterjee
Mr. Saikat Dey ...for the Petitioner

Mr. Haradhan Banerjee
Mr. Amitava Pain ...for the Opposite party

The present opposite party/plaintiff herein filed suit for declaration and injunction against the petitioner herein being T.S no. 25 of 2015 which is presently pending before the learned Civil Judge, Junior Division, Amta. In the said suit, the plaintiff has prayed for declaration of his “Barga” right in the “Ka” schedule property and also injunction and other reliefs against defendants.

The defendant/petitioner herein appeared in the said suit and filed an application under Order VII rule 11(d) of the Code of Civil Procedure praying for rejection of the plaint. The plaintiff/opposite party herein filed written objection against the said application. Learned court below by the impugned order, dismissed the application seeking rejection of plaint.

Being aggrieved by that order, the petitioner submits that the court below has failed to consider that he has got no jurisdiction as to determination of right of “Bargadarship” as claimed by the plaintiff, and as such, the said suit is not maintainable and the court below ought to have allowed the defendant’s prayer for rejection of plaint. Accordingly, the petitioner has prayed for setting aside the order impugned.

I have gone through the prayer of the plaint, wherefrom it appears that the plaintiff in prayer 7 (ka) has prayed for declaration of his Barga right in the suit property and in 7(kha), he has prayed for injunction restraining the defendants from evicting him forcibly from the said property.

Section 21(3) of the West Bengal Land Reforms Act, 1955 states that if the question as to whether a person is or is not a Bargadar, arises in the course of any suit, case, appeal or other proceeding before any court, such court shall refer it to the authority mentioned in Section 18(1) for decision and the court shall dispose of the suit, in accordance with the decision communicated to it by the aforesaid officer or authority to whom the question has been referred.

Since Section 21(3) does not create bar to the plaintiff to seek reliefs like declaration under Section 34 of the Specific Relief Act and for injunction, so the

Court below has not committed any illegality or perversity in rejecting defendant's prayer made under Order VII, rule 11(d) of the Code but he ought to have act in terms of Section 21(3) of the Act, when the question of declaration of plaintiff's Bargadarship right is directly involved in the aforesaid suit.

In such view of the matter, the court below is directed to refer the matter before the appropriate authority for determining the issue as to whether the plaintiff is a Bargadar in connection with "ka" schedule property to the plaint or not within a period of four weeks from the date of communication of the order, in compliance with Section 21(3) of the Act of 1955.

C.O. 1113 of 2017 is 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.)