

Ct.
No.
652

59
akb

16.04
2024

Shri Debashis Chakrabartty

-Versus-

**Smt. Sarada Debi, since deceased,
Sri Bharat Prasad Jaiswal & Ors.**

Mr. Subhransu Gangopadhyay

Mr. Ansunath Chakraborty
Mr. Pranab Palit

...For the Opposite Party No. 1

The predecessor of plaintiff/opposite parties herein instituted the suit, being Title Suit No. 1307 of 2012 praying for declaration that she is the legal and bona fide occupier of the suit property by virtue of registered Deed dated 19th February, 1999 and the defendants have no right to interfere with peaceful possession of the leasehold right of the plaintiff, and also prayed for decree for permanent injunction. The petitioner herein as defendant appeared in the suit and filed application under Order VII, Rule 11(d) of the Code, seeking rejection of the plaint, on the ground that the Thika Controller has decided that the defendant No. 1 / petitioner and his co-sharers are the Thika Tenant in respect of the suit property and as such suit is barred under Section 21 of the W.B. Thika Tenancy (Acquisition and Regulation) Act, 2001. Learned Court below by the order impugned was pleased to reject defendant's aforesaid application filed under Order VII, Rule 11(d).

Mr. Subhransu Gangopadhyay, learned Counsel
appearing on behalf of the petitioner being aggrieved with

the order impugned submits that Thika Controller had dealt with the issue of Thika Tenancy in connection with the Suit Property and the plaintiff herein participated in the said proceeding before the Thika Controller. The plaintiff has withheld the final determination of the said proceeding. Had he continued with the proceeding with the relevant documents, it would have gone against the plaintiff. He further submits that the Thika Controller finally decided that the defendant No. 1 and his co-sharers are the Thika Tenants in respect of the suit property and also determined the monthly revenue to be paid by this defendant and his co-sharers in respect of suit property. Accordingly, Mr. Gangopadhyay submits that under the provisions of Section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 read with Section 3 of the said Act, Civil Court has no jurisdiction to entertain said suit and accordingly he prayed for rejection of plaint.

He further submits that the Court below while rejecting the said application has committed illegality and material irregularity in exercising his jurisdiction. In fact, the Court below had failed to exercise his jurisdiction vested in law ignoring the fact that plaint is liable to be rejected as the Civil Court has no jurisdiction to decide the issue as to whether the property in question is a Thika Property or not.

Mr. Anshunath Chakraborty, learned Counsel appearing on behalf of the opposite party No. 1 raised vehement objection, contending that on the self-same point the defendant earlier filed an application challenging maintainability of the suit, which was rejected by the Court below vide order No. 53 dated 28th July, 2017. He further submits that the defendant/petitioner herein has failed to show a single scrap of paper that the property in question is a Thika Property or at any point of time of time it was a Thika Property.

Accordingly, the application is frivolous one and Court below was absolutely justified in rejecting the application filed under Order VII, Rule 11(d) of the Code of Civil Procedure and the order impugned does not call for any interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made on behalf of both the parties. It is settled law that while considering the application under Order VII, Rule 11 of the Code the averments made in the plaint is germane.

True test is first to read the averments made in the plaint as a whole, taking it to be true and upon such reading, it is to be ascertained whether plaint is liable to be rejected on the basis of pure question of law. While dealing with

such application it is not desirable to look into the defence case or to any piece of evidence unconnected with the plaint. It has been Pin-pointed time and again through various juridical pronouncements that merit or demerits of the matters in controversy cannot be gone into at this stage.

On perusal of the plaint it appears that the plaintiff in the present suit has made prayer for declaration that he is the legal and bona fide occupier of the suit property by registered Deed of lease dated 19th February, 1999 and the defendants have no right to interfere with the peaceful possession of the leasehold property by the plaintiff and for injunction to that effect.

From the averments of the plaint nowhere it appears that the property has been described as Thika property. The Court below while rejecting the said application has correctly opined that at this stage any admission if at all made by the plaintiff in any different proceeding cannot be taken into account unless and until the same is proved in terms of provisions of Indian Evidence Act. He further opined that the plaintiff should get an opportunity to prove his case wherein he has contended that he is occupying the property mentioned in the schedule to the plaint by dint of registered deed.

I do not find any perversity or impropriety in the

order impugned.

The revisional application, being C.O. 2238 of 2018 is dismissed.

Learned Court below is requested to make every endeavour to dispose of the aforesaid suit at the earliest, since the suit is pending for a considerable period of time.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)