

25.06.2024
Item No.05, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 2090 of 2024

Smt. Dalia Sarkar (Bose)

-Vs-

Smt. Manjushree N. Mondal & Ors.

Mr. Subrata Ghosh,
Mr. Bhaskar Chakraborty,
Mr. Subrata Mukherjee.
.....for the petitioner.

The petitioner had filed a suit being Title Suit No. 13 of 2016 in the 1st Court of the learned Civil Judge (Junior Division) at Barasat, District : 24-Parganas (North) praying the following reliefs :-

- a) A decree of declaration be passed that the plaintiff is a possessor of the suit property.
- b) A decree of declaration further be passed that the plaintiff may not be evicted without due process of law from the schedule below property.
- c) A decree of permanent injunction may be passed against the defendants and/or their men and agent restraining them not to enter into the schedule property to disturb the peaceful possession of the plaintiff.
- d) All costs of the suit be decreed against the defendants.
- e) All other relief or reliefs the plaintiff is also entitled in law and equity.

The defendants by an application under Order VII Rule 11 of the Code of Civil Procedure had prayed for

rejection of the plaint of the said suit alleging that it is hit by the doctrine of res judicata.

The learned Trial Judge by the Order No.12 dated April 01, 2019 had dismissed the said application, aggrieved thereby, the defendants took out an application under Section 115A of the Code of Civil Procedure being Civil Revision case No. 1 of 2019..

The learned District Judge, District- 24 parganas at Barasat, by the impugned judgment and order dated January 16, 2024 has allowed the said revisional application thereby has rejected the plaint of the said suit holding inter alia that the suit is hit by doctrine of res judicata.

Mr. Ghosh, learned Counsel for the petitioner submits that it is well settled that to decide an application under Order VII Rule 11 of the Code, only the averments of the plaint are germane, neither the defense case nor any document in support thereof can be looked into but the revisional Court below by taking into consideration of the suit filed against the erstwhile tenant of the suit property, has rejected the plaint of the suit.

Heard Mr. Ghosh, perused the materials-on-record.

There is no dispute with regard to the proposition of law as submitted by Mr. Ghosh that only the averments of the plaint are germane in deciding an application under Order VII Rule 11 of the Code but it is equally settled that admitted documents can also be looked into for the purpose of deciding the maintainability of a suit.

In the instant case, the plaintiff at paragraph 10 of the plaint has averred that she was put into possession in the

suit property by Smt. Chhaya Bose, the erstwhile tenant. The revisional Court below took the said facts into consideration and has held that the said tenant had already suffered a decree of eviction which has been affirmed by the Hon'ble High Court and the decree is now under execution and since the petitioner is claiming through the said tenant, the judgment- debtor to the said decree under execution, the present suit is barred by the doctrine of res judicata.

This Court does not find any illegality and or irregularity in the said finding of the revisional Court below warranting interference, besides the decree of eviction since is under execution, the petitioner, if intends to set up an independent title in respect of the suit property, has to approach the said Executing Court under Order XXI Rule 97 and 99 of the Code of Civil Procedure, a separate suit for determination of such right is barred under Rule 101 thereof.

C.O. 2090 of 2024 is thus disposed of without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)