

Ct. No. 652
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2024

C.O. 2810 of 2018
Rabindra Nath Ghati @ Ghanty
-Versus-
Madan Das @ Madan Mohan Das & Ors.

Mr. Krishna Das Poddar
Mr. Sujit Bhunia **...For the Petitioner**

Mr. Bratin Kumar Dey
Mr. Suman Rai **...For the Opposite Party No. 1**

Plaintiff/opposite party No. 1 herein filed a suit for declaration and injunction against the defendant No. 1/petitioner herein and other defendants/proforma opposite parties herein, being Title Suit No. 131 of 2011 seeking declaration that the plaintiff is a monthly tenant in the suit shop under the defendant No. 1 and the defendants have no right to evict the plaintiff from the suit shop without legal course along with a prayer for injunction to that effect. The defendant Nos. 1 to 4 are contesting the said suit by filing joint written statement. During pendency of the said suit, the defendant No. 1/petitioner herein filed an application under Order VII, Rule 11 of the Code of Civil Procedure and the Court below by the order impugned was pleased to reject the said application.

Being aggrieved by the said order Mr. Krishna Das Poddar, learned Counsel appearing on behalf of the petitioner submits that one Pasupati Das, since deceased, the father of the plaintiff was the tenant under the defendant No.

4, namely, Debendranath Ghati, the father of the petitioner herein and after the death of said Pasupati Das, his son namely Badal Das was inducted as the tenant in respect of the suit property and subsequently Badal Das surrendered his tenancy right before the defendant No. 4 and since then the defendant No. 4 was in possession over the suit property and on 3rd December, 2008, the defendant No. 4, i.e. father of the petitioner duly transferred the suit property in favour of the petitioner herein and his brother, namely, Haraprasad Ghati by a registered deed of gift.

It is further case of the petitioner that the opposite party herein on 2nd August, 2013 has manufactured some rent receipts obtaining signature of father of the petitioner by practicing fraud and mis-representation taking advantage of his old age and now claiming tenancy right over the suit property which is not maintainable in the eye of law. Accordingly, he has prayed for rejection of the plaint.

Mr. Poddar further contended that learned Court below has failed to appreciate that in the Panchayat area West Bengal Premises Tenancy Act, 1997 has got no application and that there is no tenancy agreement between the plaintiff and the defendant Nos. 1 to 4.

Mr. Bratin Kumar Dey, learned Counsel appearing on behalf of the opposite party No. 1 has drawn my attention

to the averments made in the application filed under Order VII, Rule 11 of the Code contending that the petitioner herein has admitted that the opposite party herein are in possession of some rent receipts though it is the case of the petitioner herein that such rent receipts were obtained by practicing fraud by the plaintiff. He further submits whether such rent receipts are procured by practicing fraud upon the father of the petitioner, taking advantage of his old age or not is to be decided after trial but for that reason it cannot be said that the plaintiff/opposite party herein have no cause of action or that the suit is barred by any law. He further contended that he has not sought for declaration that he is a tenant under the West Bengal Premises Tenancy Act, 1997 and on the contrary he has merely sought for his tenancy right in respect of his shop room. Accordingly he submits that the order impugned does not call for any interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

I have gone through the averments made in the plaint and also the statements made in the application under Order VII, Rule 11 of the Code. Needless to say that while considering an application under Order VII, Rule 11 of the Code the averments made in the plaint are germane for the purpose of deciding as to whether the suit is barred under

any law or the plaint discloses any cause of action for filing the suit or not.

On perusal of the plaint it appear that in paragraph 6 of the plaint, plaintiff has categorically stated that the defendant No. 1 has served a false notice dated 19th August, 2011 proposing the determination of monthly tenancy of the plaintiff in the suit premises on the expiry of 15th day of *Bhadra 1418 B.S.* and plaintiff has given suitable reply to that notice to quit, through his lawyer. Thereafter on 28th August, 2011 defendants had allegedly threatened to commit mischief which is the cause of action of the suit. Defendants have also disclosed in his application under Order VII, Rule 11 that the plaintiff/opposite party herein has procured certain rent receipts allegedly signed by defendants' father / erstwhile landlord and by dint of which the plaintiff / opposite party herein is claiming tenancy right over the suit property.

Rejection of plaint on the ground of non-disclosure of cause of action can only be made when Court can come to a conclusion that even if all the allegations set out in the plaint are established, the plaintiff would not be entitled to any relief. But at this stage Court is not supposed to consider the merits of the matter. In the instant proceeding the plaint is based on certain rent receipts, which according

to defendants may have been procured by the plaintiff. But for determination as to whether plaint discloses any cause of action or not, the Court cannot at this stage consider as to the validity of those documents.

In the above facts and circumstances of the case I find that the averments made in the plaint no way suggest that the suit is either barred under any law nor it can be said that plaint does not disclose any cause of action. Accordingly, I do not find any substance in the present Revisional Application and as such the order impugned does not call for any interference.

The application, C.O. 2810 of 2018 thus stands dismissed.

However, this order will not preclude the petitioner herein to prefer application before the Court below challenging maintainability of the suit, if so instructed and in the event of filing such application, the Court below will adjudicate such application in accordance with law without being influenced by any observation made herein.

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.)