

April 29, 2024
Sl. No.A 31
Court No.19
s.biswas

CO 3262 of 2023

Sri Vidhya Murthy @ Sri Vidya Murthy and others
vs.
Niraj Agarwal and another

Mr. Rajdeep Bhattacharya
Mr. Sanjib Sarkar

... for the petitioners

Mr. Sibasis Ghosh
Mr. Nishant Saraf
Ms. Rakhi Upadhyay

... for the opposite parties

1. Affidavit of service is taken on record.
2. The petitioners submit that the order dated September 6, 2023 was passed by the learned Civil Judge (Junior Division), 3rd additional Court, Alipore, South 24 Parganas in Title Suit No.1207 of 2022, without hearing the petitioners.
3. The petitioners are the defendants, who prayed for rejection of the plaint in Title Suit No.1207 of 2022. The learned Civil Judge (Junior Division), 3rd additional Court, Alipore, South 24 Parganas, upon relying on the decision of the Hon'ble Apex Court in the matter of **Gurdev Singh vs. Harbindar Singh** reported in 2023 (1) Indian Civil Cases 366 (SC), arrived at the finding the plaint was not liable to be rejected. The issues involved were triable and this was not a case of clever drafting.
4. Mr. Bhattacharya, learned advocate for the petitioners submits that the learned court did

not hear the defendants and passed the order without any opportunity whatsoever. Such order was passed in violation of principles of natural justice.

5. Mr. Ghosh, learned advocate for the opposite parties, submits that the application was heard and considered. Thereafter, the order impugned was passed.
6. The issue is whether this court should interfere with the findings of the learned court. On perusal of the order impugned, it appears that the parties were heard. The contentions of the defendants were recorded. The decision of the Hon'ble Apex Court was also taken note of. Thus, the court was of the view that objection of the defendants with regard to the maintainability of the suit would be decided at the trial. The plaint should not be rejected as it was not a case of clever drafting in which an illusion of a cause of action was sought to be created.
7. The plaintiffs filed a suit for declaration, mandatory and permanent injunction against the defendants. The plaint case is that the plaintiffs were the sole and absolute owners in respect of three flats on the first floor and third floor and common areas and car parking spaces in premises No.P-255, Purna Das Road, Police Station Rabindra Sarobar, Kolkata – 700029.

The defendant nos.1 to 3 did not have any exclusive right in respect of the common spaces. That the defendant no.2 was a stranger and was trying to raise construction in the B schedule property. The plaintiff was the sole owner of the B schedule property. On and from July 9, 2022, the defendants and their men and agents started disturbance and causing obstruction in the peaceful enjoyment of the B schedule property and the defendants were also trying to change the nature and character of the A and C schedule property. Thus, the suit was filed seeking several reliefs.

8. By an application, the defendants prayed for rejection of the plaint. The only point on which such rejection was claimed is paragraph 2. The same is quoted below:

“2. That the defendants state that this Court shall have no jurisdiction to try the instant suit, where the suit appears from the statement in the plaint to be barred by law and the instant matter is exclusively and impliedly barred. That the further proceeding of the suit will be abuse of process of Law and wasting the judicial time.”

9. The defendants only objected to the jurisdiction of the court to try the suit. It was further stated that the suit was an abuse of process of court
10. I do not find that any of the grounds stated under Order 7 Rule 11 of the Code of Civil Procedure had been stated in the said application to justify the claim of the defendants

that the court did not have jurisdiction and the plaint should be rejected. The plaintiffs filed the suit for declaration and permanent injunction against the defendants who were allegedly disturbing the peaceful possession and enjoyment of the properties of the plaintiff. Allegations of raising unauthorized constructions were also made. A meaningful reading of the plaint does not indicate that the suit is either barred by law or did not disclose cause of action.

11. Reference is made to decision of **G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.** decided in **Civil Appeal No.- 2737 of 2023.**

The Hon'ble Apex Court held as follows:-

"6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose cause of action.

8. The learned counsel appearing for the second and third respondents vehemently submitted that on a plain reading of the plaint, it is crystal clear that cause of action is not disclosed.

Therefore, we have perused the plaint. After having perused the plaint and in particular paragraphs 16 and 17, we find that the cause of action for filing the suit has been pleaded in some detail. It is pleaded how the first appellant acquired title to the property. The facts constituting alleged cause of action have been also incorporated in paragraph 17.

9. We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter.”

12. In the decision of ***Kamala and ors. vs. K.T.***

Eshwara Sa and ors., reported in **(2008) 12**

SCC 661, the Hon’ble Apex Court held as

follows:-

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise

between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

13. The revisional application is dismissed.
14. There shall be no order as to costs.
15. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)