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2024
Ct. No.19

CO 3705 of 2023

**Pratima Adak
Vs
Sagardev Chakraborty & Ors.**

**Mr. Arun Naskar
Mr. Girish Chandra Gupta
.....For the Petitioner**

1. The revisional application arises out of an order dated 20th December, 2022 passed by the learned Additional Civil Judge (Junior Division), Chandannagar, Hooghly, in Title Suit No. 306 of 2019. By the order impugned, learned trial court rejected the petition filed by the defendant no.4 under Order 14 Rule 2(b) read with Section 151 of the Code of Civil Procedure.

2. Learned advocate for the petitioner submits that the plaint did not disclose any cause of action. The suit is vexatious. The defendants had right, title and interest in respect of the 'B' Schedule property. The plaint did not disclose exactly when the predecessors of the defendants had trespassed into the property. Such dates have not been mentioned. The suit was barred by the laws of limitation and should be dismissed on the plaint case itself, upon framing a preliminary issue. No evidence was

necessary.

3. The petitioner contends that the suit should be dismissed as it is barred by limitation. Further contention is that the suit property was a 'patta' land and could not be sold to the plaintiffs.

4. The learned court upon consideration of the ingredients of Order 14 Rule 2(b) of the Code of Civil Procedure, arrived at the conclusion that limitation in the facts of this case, was a mixed question of law and fact. Moreover, whether the suit property was a 'patta' land and could not be sold, was to be decided as an issue in the suit, upon evidence. The validity of the sale in respect of the property in favour of the plaintiffs, could not be decided without trial.

5. The scope of interference with an order of a subordinate court under Article 227 of the Constitution of India, is limited. Only errors of law can be corrected. Apart from error of law, procedural irregularity emanating from such error of law could also be corrected. In the instant case, the plaint discloses a cause of action. The cause of action arose when the defendants had allegedly trespassed into the B schedule property in or around March 31, 2019. Defendants were issued a notice to quit and vacate the premises, which they did not comply with and thus the suit was filed for decree of eviction of trespasser and recovery of possession.

6. According to the plaint case, the 'A' Schedule property was previously owned by Manoj Kumar Roy, Malay Kumar Roy and Jagannath Bandopadhyay. They sold the property to the plaintiffs as also to one Tapas Kumar Barui. Tapas Kumar Barui also sold his share to the plaintiffs. Thereby, the plaintiffs became the absolute owners in respect of the entire 'A' Schedule property. The 'A' Schedule was in a ruinous condition and had several occupiers. Some of the occupiers claimed to be tenants, whereas, some did not have any right of possession. The predecessors of the defendants, namely, Manik Santra who was in possession of a dilapidated structure, did not pay any rent. Manik Santra allegedly misled the plaintiffs to execute a deed, by which, a small portion of the ground floor was transferred to him, to run a cycle repairing shop. The old premises on A schedule property was wholly demolished and no portion of the old building remained. A new multi storied building was constructed during the lifetime of Manik Santra. Manik Santra was ousted from the property during such construction and he did not pray for restoration of possession. The tenancy did not continue. Manik Santra, claiming to be a consumer in respect of the B schedule property in the building which was constructed, proceeded before the District Consumer

Dispute Redressal Forum, Chinsurah, Hooghly.

7. The plaint case is that the defendants trespassed into the B schedule property. They were asked to quit and vacate. Thereafter, the suit for eviction of trespassers and recovery of possession was filed. The 'B' Schedule property is one shop with super built up area of 103.08 sq.ft. being shop No.1 situated upon the ground floor of the multistoried building constructed upon A schedule property.

8. Thus, the plaint case, as discussed hereinbefore does not indicate that the suit is either barred by the laws of limitation or by any other law. Whether the defendants are trespassers or they have a right of possession in the B schedule property in the newly constructed building, has to be decided by the court, in trial. The plaint case, as has been framed, does not indicate that the suit is barred by limitation. The factual discrepancies pointed out by the petitioner, has to be proved in the trial.

9. Under such circumstances, the learned court rightly applied the law and dismissed the application. The suit shall be decided on evidence.

10. The revisional application stands disposed of.

11. There shall be no order as to costs.

12. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)