

Item No.34
21.05.2024
Court. No. 19
GB

C.O. 4160 of 2023

Bisweswar Hazra & Anr.
Vs.
Subhasis Mondal & Ors.

*Mr. A. Mukherjee,
Mr. Arijit Pradhan,
Mr. Prithish Chandra*

...for the Petitioners.

1. The revisional application arises out of an order dated September 2, 2023, passed by the learned Civil Judge (Senior Division), 1st Court at Tamluk, District – Purba Medinipur in Title Suit No.82 of 2023.
2. By the order impugned, the learned court rejected an application under Order 7 Rule 11 of the Code of Civil Procedure filed by the petitioners/defendants.
3. Mr. Chandra, learned advocate for the petitioners contends that during the pendency of an application before the Land Reforms and tenancy Tribunal, the suit was filed for declaration, partition and permanent injunction against the petitioners. In effect, the suit was directed against the entries in the record of rights, although by clever drafting such facts were intentionally suppressed in the plaint.
4. According to Mr. Chandra, the suit was barred by law and the proper remedy of the plaintiffs would be to file appropriate applications before the authorities under the West Bengal Land Reforms Act, 1955. The West Bengal Land Reforms Act, 1955 bars any suit arising

out of any proceeding or any matter which was covered by the said Act. Such suit was filed to circumvent the applicability of the said Act. Reference is also made to the decisions of the Hon'ble Apex Court wherein the Apex Court held that a suit which was likely to fail, should be nipped at the bud. By clever drafting, the plaintiffs had created an illusion of a cause of action. The suit could not have been filed during the pendency of a proceeding before the Land Reforms and Tenancy Tribunal.

5. Upon perusal of the plaint, it appears that the suit for declaration, partition and permanent injunction has been filed against the defendants. It is well-settled that while adjudicating an application under Order 7 Rule 11 of the Code of Civil Procedure, the averments in the plaint should be deemed to be true and correct. The contentions of the defendants either in their written statement or in the application seeking rejection of the plaint, are not to be looked into. Upon accepting the averments in the plaint to be true and correct, the court is required to enquire as to whether the suit would prove to be abortive. The perusal of the plaint and the pleadings do not indicate that the suit is barred by law. The plaintiffs claim right, title and interest in respect of the property on the basis of a patta. According to the plaintiffs, the defendants were forcefully trying to evict the plaintiffs from their lawful

possession, thereby, denying their right, title and interest in the property in question.

6. The correctness of such statements shall be decided in the suit, as an issue, upon evidence. Paragraph 8 of the plaint clearly narrates how the defendants were trying to disturb the possession of the plaintiffs, which led to the filing of the suit. Thus, a meaningful reading of the plaint would not lead any court to come to a conclusion that the suit was barred by any law.
7. Under such circumstances, the revisional application is disposed of. All objections raised in the application under Order 7 Rule 11 of the Code of Civil Procedure shall be available to the defendants in the final hearing of the suit.
8. However, there will be no order as to costs.
9. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)