

16.05.2024
Item No.3
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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Appellate Side

CO/75/2024

SUGURULLAH MOHAMMAD @ SUKURULLA MD. & ANR.
VS
PRADIP DAS & ORS.

Mr. Momenur Rahman, Adv.,
Mr. Bikash Singha, Adv.
..for the petitioners.

This is an application by the defendants in a suit for declaration and injunction filed by the opposite parties before the Court of the learned Civil Judge (Junior Division), 1st Court at Jalpaiguri. The petitioners are aggrieved by an order dated 8th April, 2024 by which the application of the defendants under Order I Rule 10(2) read with Section 151 of the Code of Civil Procedure, 1908 (in short CPC) was rejected. In the petition filed by the defendants before the Court of the learned Civil Judge (Junior Division), 1st Court at Jalpaiguri the petitioners have stated that their names should be expunged from the array of defendants as they have not claimed any right or title or interest in respect of the suit property. The petitioners have purchased a different property and

as such, the suit is not maintainable as against the defendants.

The application is not maintainable simply because there are only two defendants in the suit. Both the defendants had made this application for expunging their names from the array of defendants. In the event such prayer is allowed, the suit will fail as there will be no defendant in the suit. Even ignoring this ground which may be construed to be a technical one going by the nomenclature of the application, then the application can at the highest be treated to be one as under Order VII Rule 11(a) of CPC where the plaint does not disclose a cause of action. Even treating the application made by the petitioners as defendants in the suit, then also the same is not maintainable and is likely to be rejected.

In an application filed at the threshold for deletion/expunging the name of a defendant from the array defendants or an application under Order VII Rule 11(a) of CPC the averments made in the plaint are required to be taken as true and correct. Only the plaint can be looked into along with the documents annexed thereto.

In the instant case, the petitioners have invited the Court to consider their defence which cannot be done at the time of adjudicating an application under Order X Rule 2 read with Section

151 of CPC or an application under Order VII Rule 11(a) of CPC. The allegation in paragraphs 7, 8 and 9 of the plaint though may not have provided the minute details but it alleges that on a particular date and time the defendants came to the suit land and tried to dispossess the plaintiffs and indulged in altercation with the plaintiffs. The plaintiffs have also made complaint to the local police station. The case, therefore, sought to be made out by the plaintiffs is one under Section 34 of the Specific Relief Act, 1963. A plaint can be rejected in view of the ratio laid down in ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives And Others*** reported in (2020) 7 SCC 366 when the plaintiffs by clever drafting of plaint have attempted to make out a illusory cause of action.

In the instant case, at this stage when the written statement is also not on board, the disclosures have not taken place it cannot be said that the cause of action, if any, pleaded in the plaint filed in the suit by the plaintiffs is a illusory one and thereby reject the plaint. The defendants may have a reasonable prospect to succeed in the suit at the trial but that will not empower the Court to reject the plaint or permit expunging of the names of all the defendants by taking into consideration the defence put forth by the defendants in their application.

The application being C.O. 75 of 2024,
therefore, fails and is accordingly dismissed.

(ARINDAM MUKHERJEE, J.)