

Ct. No.
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**08.07
2024**

**IN THE CIRCUIT BENCH OF CALCUTTA
HIGH COURT AT JALPAIGURI
Civil Revisional Jurisdiction**

C.O. 81 of 2024
Shri Reggie Lama
-Versus-
Smt. Tara Subba & Anr.

Mr. Ajay Singhal

...For the Petitioner

Mr. Jorsay Namka
Mr. Debabrata Rai
Mr. Sanjeev Gupra

...For the Opposite Parties

Being aggrieved and dis-satisfied with the Order No. 46 dated 20th April, 2024 passed by the learned Civil Judge (Senior Division) at Darjeeling in Title Suit No. 41 of 2019, present application has been preferred under Article 227 of the Constitution of India. By the Impugned order learned Court below was pleased to dismiss the petitioner/plaintiff's prayer for rejection of counter-claim filed by the substituted defendant No. 1 in the original suit.

Petitioner herein as plaintiff instituted a suit for perpetual injunction against one Tilmaya Subba (Chang), since deceased, in respect of his purchased property. plaintiff's further case is his vendor Mani Kumar was married to one Jyoti Subba. Said Mani Kumar proposed to sell the property to petitioner/plaintiff, which was accepted by plaintiff and accordingly aforesaid sale deed was executed in favour of plaintiff/petitioner by said

original owner Moni Kumar during his life-time through his power of attorney. One Tilmayee Subba(chang), who was the original defendant, allegedly caused disturbance at the said purchased suit property and for which plaintiff/petitioner being bonafide purchaser for value, approached the court seeking protection by way of prohibitory order, being aforesaid Title Suit No. 41 of 2019.

Mr. Ajay Singhal, learned Counsel appearing on behalf of the petitioner submits that the original owner Moni Kumar Subba @ Mani Kumar Subba, died intestate on 27th May, 2019. In the said suit the plaintiff prayed for ad interim injunction before the Court below, who turned down petitioner's prayer. However an appeal was preferred against the said rejection order wherein the Court below in Misc. Appeal No. 7 of 2019 was pleased to grant ad interim injunction, which was thereafter affirmed by the Appellate Court.

Thereafter the petitioner/plaintiff was informed that on 22nd December, 2022 the said sole defendant Tilmaya Subba (Chong), who filed her written statement and written objection before the Court, died. It is submitted that on receipt of the information about the death, the legal heirs of said sole defendant was duly

substituted who are the present opposite parties and who filed written statement to the plaint and the substituted defendant No. 1 also filed counter-claim where the said defendant No. 1 herein has claimed to be only survival Class-I legal heirs under Hindu Succession Act, 1956.

In this context the petitioner submits that the plaintiff has purchased the suit property at a consideration of Rs. 1 crore on 14th November, 2018. In the counter-claim substituted defendant has prayed for a declaration that the counter-claimant is the original owners of the schedule property and also for cancellation of the sale Deed or any other Deed recognizing Reggie Lama (petitioner herein) as owner of the suit property including Record of Rights.

Learned Counsel for the petitioner in this context submits that he filed an application for rejection of the plaint under Order VII, Rule 11 of the Code of Civil Procedure (Code) on the ground that the petitioners are claiming themselves as legal heirs of aforesaid original owner Mani Kumar, but since Mani Kumar was a person belonging to schedule Tribe community so opposite party also being the members of a Schedule Tribe community cannot claim their heir-ship under the Hindu Succession Act, in view of bar imposed under

Section 2(2) of the Hindu Succession Act. He further submits that the Deed was executed on 14th November, 2018 whereas the present counter-claim has been filed by the counter-claimant in the year 2023 and accordingly the prayer is hopelessly barred by limitation. He further submits that no cause of action has arisen against the present petitioner/plaintiff for filing the counter-claim and as such the counter-claim is liable to be rejected being barred by Hindu Succession Act as well as barred under the Limitation Act and also on the ground that the counter claim does not disclose any cause of action against present petitioner.

Mr. Jorsay Namka, learned Counsel appearing on behalf of the opposite party raised objection contending that his client does not belong to any Schedule community as such so far as heir-ship is concerned, Hindu Succession Act is applicable in the present case. Moreover, as soon as he came to know about the alleged purchase Deed of the plaintiff/petitioner herein, he filed counter claim before the Court for cancellation of the said Deed. He further submits that from the prayer portion of the counter-claim it clearly reveals that he has sought for cancellation of the Deed in the name of plaintiff Reggie lama and entry in the

Record of Rights recognizing, Reggie Lame as the owner of the suit property and as such he has clearly disclosed cause of action against the present petitioner/ plaintiff. Accordingly, the Court below was justified in rejecting the petitioner's claim under Order VII, Rule 11 of the Code and the order impugned does not call for any interference by this Court.

I have considered the submissions made on behalf of the parties and perused the materials placed on record. The grounds under which the present application under Order VII, Rule 11 of the Code has been filed mainly relates to the contention that the prayer for cancellation of Deed executed by Mani Kumar Subba, in the counter-claim is barred by law of limitation. It appears, that such contention has been seriously disputed by the counter-claimant in its application and according to the counter-claimant, he has learnt about the execution of the said Deed in the year 2023 and as soon as he came to know about the Deed he has filed counter-claim. Accordingly, it is quite apparent that whether the counter-claimant's prayer for cancellation of Deed executed by the Power of Attorney holder of Mani Kumar Subba in favour of the petitioner, is barred by law or not is not a pure question of law only.

As in the present context the question of limitation is connected or interwoven with the merits of the case and as learned counsel for opposite party has taken a specific stand from the averments of the counterclaim that the prayer for cancellation is within the period of limitation it would not be proper to reject the plaint at the threshold.

Moreover, learned counsel on behalf of opposite parties herein have also disputed in course of the hearing that his client does not belong to Schedule Tribe community. Though learned Counsel for the petitioner/plaintiff contended that said Mani Kumar was a member of parliament and also was a person belonging to schedule Tribe community and he has document to prove the same but it appears to me that the issue raised by counter claimants regarding heirship and their claim of not being a member of schedule Tribe community is also not a pure question of law. On perusal of the entire written statement as well as the counter-claim, I do not find that the said counter-claim suffers for want of any cause of action. The cause of action as it appears in the legal terminology is always bundle of facts. There is always a distinction between non-disclosure of cause of action and absence of cause of action. The power of

rejection of plaint on the ground of non-disclosure of cause of action can be exercised by the court only when the court comes to the conclusion that even if all the allegations including the prayer in the counterclaim herein are established, the counter claimant would not be entitled to any relief. Needless to say that for arriving such decision, averments in the counter claim alone are relevant and material and in that view of the matter it cannot be said that the present counter-claim does not disclose any cause of action from the facts and circumstance of the case.

In view of the aforesaid discussions I am convinced that the order impugned by which the Court below has rejected the petitioner's prayer under Order VII, Rule 11 of the Code does not suffer from any perversity or impropriety which calls for interference by this Court, invoking jurisdiction under Article 227 of the Constitution of India.

In such view of the matter, C.O. 81 of 2024 is hereby dismissed.

However, this dismissal order will not preclude the petitioner herein to prefer an appropriate application before the Court below challenging maintainability of the counter-claim application and in the event of filing such

application by the petitioner, the court below will dispose of the same in accordance with law without being influenced by any observation made herein.

(Ajoy Kumar Mukherjee, J.)