

19.11.2025
SL No.69
Court No.6
(gc)

CO 792 of 2025

Lakshmi Kanta Manna
Vs.
Prasanta Das & Ors.

Mr. Surya Prasad Chattopadhyay,
Mr. S. Nandi

...for the Petitioner.

Mr. Ramij Munsi

...for the O.P. No.1.

1. The petitioner is aggrieved by an order dated February 14, 2025 passed by the learned Civil Judge (Jr. Div.), Additional Court, Hooghly in T.S. No.114 of 2024. By the order impugned, the learned Court decided to hear the issue of maintainability as a preliminary issue. The petitioner as the defendant no.2 filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint. According to Mr. Chattopadhyay, the plaint as it stands should be nipped at the bud, inasmuch as, the suit is hit by Section 34 of the Specific Relief Act and also by Article 54 of the Limitation Act. The cause of action was time barred. The issue of possession had not been pleaded. The plaintiff was a middleman and had handled some money when the defendants were trying to sell out the property. The plaintiff does not have any

right, to seek specific performance of the agreement of 2019.

2. The alleged agreement for sale of 2019 is *non est*. It is further submitted that although, the learned Court accepted the submission of the defendants, the Court still framed a preliminary issue on maintainability.
3. I have gone through the order impugned. I find that apart from the prayer for declaration, there is a prayer for permanent injunction. The plaintiff also has pleaded that he has paid a sum of Rs.1 crore 38 lakhs and odd to the defendants in respect of the property. There was a promise by the defendants to sell the property and the parties had transformed such agreement in writing. The plaintiff was in possession.
4. The Court was rightly of the view that issue can be decided as a preliminary issue and the parties would be allowed to adduce evidence. The plaint, read as a whole, cannot be thrown out at its nascent stage.
5. There are pleadings that, substantial money had been paid to the defendants and there is a prayer for permanent injunction restraining the defendants from changing the nature and character of the suit property. This Court is of the view that the learned Court did not err in refusing to reject the plaint. Even if there is a semblance of

a cause of action disclosed in the plaint, the plaint cannot be rejected outright.

6. The preliminary issue as to the maintainability of the suit will be decided by the learned Court within a period of two months from the date of communication of this order.
7. In the event the next date has been fixed belatedly, the petitioner will be at liberty to pray for preponement of the date, upon a notice to the other side.
8. The revisional application is accordingly disposed of.
9. There shall be no order as to costs.
10. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)