

D/L- 28
07/03/2025
Ct. No.-6
Aritra

C.O. 817 of 2025

**Saidul Mallick @ Saidul Haque Mallick & Ors.
Versus
Sk. Fazlul Haque & Ors.**

Mr. M.A. Samad

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.99 dated January 14, 2025 passed by the learned Civil Judge (Sr. Div.), Serampore, District-Hooghly in Title Suit No.60 of 2011 which has been subsequently re-numbered as Title Suit No.545 of 2013.

By the order impugned the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioner submits that the suit is barred by the provisions of Section 14X read with Section 51C of the West Bengal Land Reforms Act.

Section 14X of the 1955 Act deals with bar of jurisdiction of civil courts. It states that no civil court shall have jurisdiction to decide or deal with any question or to determine any matter which by or under the said chapter is required to be decided or dealt with or to be determined by the revenue officer or other authority specified therein and no orders passed or proceedings commenced under

the provisions of the said chapter shall be called in question in any civil suit.

After going through Section 14X of 1955 Act this Court finds that the civil court's jurisdiction is barred only in respect of the matters which the revenue officer is authorized to decide and deal with under Chapter IIB of the West Bengal Land Reforms Act. Chapter IIB deals with ceiling on land held by a riyat. After reading the plaint as a whole this Court is of the considered view that the issues which the revenue officer is authorized to deal with under Chapter IIB of the 1955 Act is not the subject matter of the instant suit.

Section 51C of the 1955 Act states that when an order has been made under sub-section (1) of Section 51 directing revision or preparation of a record of rights, no civil court shall entertain any suit or application for the determination of revenue or the incidents of any tenancy to which the record of rights relates and if any suit or application in which any of the aforesaid matters is in issue is pending before a civil court on the date of such order, it shall be stayed and it shall, on the expiry of the period prescribed for an appeal under sub-section (5) of Section 51A or when such an appeal has been filed under that sub-section as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

In the instant suit the plaintiff/opposite party herein has not called in question the determination of revenue or the incidence of any tenancy to which the record of right relates. The instant suit is a suit for declaration, partition and for other consequential reliefs. From a bare reading of the statements made in the plaint it does not appear to this Court to be barred under the aforesaid provisions of the 1955 Act.

In course of hearing of this application the learned advocate appearing for the petitioner submits that prayer (d) and (e) of the plaint is barred under Section 14X and 51C of the 1955 Act. In prayer (d) of the plaint the plaintiff/opposite party has prayed for a decree declaring that the forcible possessors had or have no salable right to transfer the said property. In prayer (e) the plaintiff/opposite party has prayed for a decree declaring that the sale deed for the year 2022 in the name of the defendant No.2 as well as the deed of Sk. Sarabuddin are void, illegal and not binding upon the plaintiff and the defendant No.1. The fact as to whether the forcible possessors had or have no salable right to transfer the property and as to whether the deeds are void, illegal and not binding upon the plaintiff and the defendant No.1 cannot be decided by the revenue officer under the provisions of the West Bengal Land Reforms Act, 1955 but it falls within the jurisdiction of Civil Courts under Section

9 of the Code of Civil Procedure and does not fall within the exception carved out in Section 9 of the Code.

The learned advocate appearing for the petitioner further submits that the instant suit is barred under the provisions of Section 34 of the Specific Relief Act as the plaintiff has not prayed for recovery of possession when it has been specifically admitted in the plaint that the plaintiff is not in possession of the suit property.

After going through the plaint more particularly paragraph 2 thereof this Court finds that it has been specifically stated that the plaintiff after purchasing the said property immediately took possession of the same and have applied for mutating his name in the revenue records.

A plaint shall be rejected under Order 7 Rule 11 of the Code of Civil Procedure where the suit appears from the statement in the plaint to be barred by any law. Since in the plaint it has been specifically stated that the plaintiff is in possession of the suit property, this Court is of the considered view that the bar under proviso to Section 34 of the Specific Relief Act does not stand attracted to the case on hand.

The learned advocate appearing for the petitioner further submits that the name of the petitioners have been duly recorded in the revenue records and the record of rights being a document of possession which carries a presumption of correctness, this Court is to consider that

the plaintiff is not in possession of the property in question.

It is well-settled that while considering an application under Order 7 Rule 11 of the Code only the statements made in the plaint is to be considered and the defence case as well as the documents in support of the defence case cannot be looked into at the time of considering the prayer for rejection of the plaint. That apart, though there is a presumption attached to the record of rights but the same is a rebuttable presumption. The dispute, if any, as to possession of an immovable property has to be decided in the suit by trial or evidence.

In view thereof, this Court is not inclined to accept the contention of the learned advocate for the petitioner that the merely because the name of the defendant is recorded in the record of rights the plaintiff is not in possession of the suit property.

The learned Trial Judge took note of the points raised by the petitioner in the application under Order 7 Rule 11 of the Code and after considering each and every points raised therein, the learned Trial Judge rejected the application under Order 7 Rule 11 of the Code by assigning cogent reasons in support of the ultimate conclusion.

This Court is, therefore, not inclined to interfere with the order impugned. However, the cost imposed upon the petitioner by the order impugned stands deleted.

With above observations and directions CO 817 of 2025 stands dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)