

M/L - 123
14.01.2025
Court. No. 5
S.Kundu

C.O. 1539 of 2024

Amit Charan Pal
Vs.
Chandra Chatterjee & Anr.

Mr. Shuvanil Chakraborty

...for the petitioner.

1. Challenging the Order No. 70 dated 9th January, 2024 passed by the learned Civil Judge (Sadar Court), Suri, Birbhum in Title Suit No. 18 of 2015 whereby the petitioner's application for amendment of the plaint was rejected, the instant revisional application has been filed.
2. The petitioner had filed the above suit before the learned Civil Judge (Sadar Court), Suri, Birbhum, *inter alia*, praying for a decree for permanent injunction against the defendants. The plaintiff's case proceeds on the premise that the plaintiff has been residing in the suit property from the month of May, 1994 as a tenant under the defendants. The defendant no. 1 had later offered to sell the suit property to the plaintiff for and at a consideration of Rs.3,10,000/- and a sum of Rs.1,30,000/- was paid as an advance. Subsequently, the defendant no. 1 refused to transfer the property in favour of the plaintiff though on 14th February, 2014, a deed of sale was executed by the defendant no. 1 by

putting his thumb impression. The plaint also refers to a previous deed signed by the defendant nos. 1 and 2 on 1st January, 2009 whereunder the sale consideration of the suit property was noted. Subsequently, the defendants refused to sell the property and also threatened to evict the plaintiff.

3. In the circumstances as aforesaid, the aforesaid suit was filed praying for permanent injunction against the defendants so as to restrain them from taking any steps to sell the property in favour of any person except the plaintiff. Although leave under Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) was sought for, to incorporate the prayer for specific performance, no such leave appears to have been granted by the learned court. Subsequently, an amendment application was filed by the petitioner on 21st February, 2022, *inter alia*, praying for amendment of the plaint. So as to incorporate the prayer for specific performance. To morefully understand the scope of the amendment application, the schedule of the amendment is re-produced hereinunder.

“Text of Amendment

Schedule :

1. *In the caption of the plaint the words and figure “suit for injunction U/sec. 44 of the Transfer of Property Act valued at Rs.25/- will be deleted and in its place the words and figure “suit for Specific Performance of agreement dated January 01, 2009 and for declaration*

and permanent injunction valued at Rs.3,10,000/- (Rupees Three Lakhs Ten Thousand only)” may be inserted.

2. Entire prayer portion in sub paragraph (b) of the paragraph 9 be deleted and in its’ place the following be inserted.

(b) That the plaintiff claims Specific Performance of agreement dated January 01, 2009 in the following manner :-

(i) “Execution and Registration of the Deed of Conveyance for transfer of the said premises more fully described in schedule to the plaint, in favour of the plaintiff;”

(ii) In the event the defendants Nos. 1 and 2 refuse to execute and register a conveyance for transfer of the said premises more fully described in schedule to the plaint, in favour of the plaintiff, despite being directed to do so, the Register of any other competent officer of this Court be directed to execute and register a conveyance for transfer of the said premises on behalf of the defendant Nos. 1 and 2;

3. Entire paragraph No. 10 be deleted and in its’ place the following be inserted :

“For the purpose of Court fees and jurisdiction, the suit is valued at Rs. 3,10,050/- (Rupees Three Lakhs Ten Thousand only), Rs. 3,10,00/- for specific performance of agreement, Rs. 50/- for injunction. The plaintiff has duly paid appropriate ad valorem court fees on the instant suit. The plaintiff undertakes to pay such further court fees as this Learned Court may be pleased to direct.”

4. It would appear from the above, the plaintiff is interested to convert the suit for injunction under

Section 44 of the Transfer of Property Act to one for specific performance of the agreement dated 1st January, 2009 and for declaration and permanent injunction. It appears that the learned Court by order dated 9th January, 2024 was of the view that since the amendment seeks to change the nature and character of the suit, the same should not be allowed and accordingly, rejected the same.

5. Mr. Chakraborty, learned advocate appearing in support of the instant revisional application would submit that all ingredients of the suit for specific performance are available in the plaint and as such, the finding to the contrary by the learned Judge is perverse. He submits that the order dated 9th January, 2024 should be set aside and the amendment application should be allowed.
6. Heard the learned advocate for the petitioner and considered the materials on record. I notice that the suit is not for specific performance. Perusal of the prayer in the form of leave under Order II Rule 2 of the Code would clearly identify that the plaintiff wanted to reserve the right to file a suit for specific performance by obtaining leave under Order II Rule 2 of the Code of Civil Procedure 1908. Be that as it may the order sheet has not been disclosed. The petitioner would submit that no leave under Order II Rule 2 of the Code had

been granted. Having regard thereto, and considering that the amendment sought for, if allowed, would alter the nature of the suit from one for declaration and injunction to that of specific performance, I am of the view that there is no scope to interfere with the order.

7. Having regard thereto, the revisional application fails and is dismissed.
8. There shall be no order as to costs.

(Raja Basu Chowdhury, J.)