

17.06.2025
Item No.7
PG/KS
Ct. No.446

C.O. 2130 of 2024

Biswanath Ghosh & Ors.

Versus

Dilip Das & Ors.

Mr. Tapas Bhattacharya

Mr. Aviroop Bhattacharya

.....For the Petitioners

Mr. Kartick Kumar Bhattacharya

Mr. Tulsi Das Roy

Mr. Tirthankar Roy

Ms. Soumashree Dutta

Ms. Papiya Naskar

.....For the Opposite Parties

1. Affidavit of service filed in Court be taken on record.
2. This is an application under Article 227 of the Constitution of India filed by the defendant nos.3 to 5/petitioners against an order of refusal regarding the maintainability of the suit as filed by the defendants/petitioners vide an order dated 21st March, 2024 by the learned Civil Judge (Junior Division), Kalyani, Nadia in Title Suit No.134 of 2020.
3. A suit has been filed by the present opposite parties against the present petitioners before the learned Trial Court for declaration and injunction.
4. It is the contention of the learned advocate appearing on behalf of the petitioners that the contents of the plaint itself will show that the suit has been filed for declaration and injunction when it should have been a suit for specific

performance of contract. It is specifically pointed out that the valuation of the suit filed for declaration is only Rs.100/- and in order to avoid such valuation, a suit for specific performance has not mentioned.

5. The learned advocate has drawn the attention of this Court to paragraphs 3 to 6 and the prayer portion in order to substantiate their claim that the suit ought to have been filed under specific performance of contract. The suit has been contested by filing the written statement by these petitioners. The present petitioners also filed an application on the ground of maintainability of the said suit with a prayer to dismiss the suit.
6. No written objection was filed on behalf of the plaintiffs, however, the learned Trial Court vide order impugned dismissed such prayer with the observation that there is no scope of holding a mini-trial at this stage, when the suit is pending and there is no express or implied bar in trying the suit.
7. The learned advocate appearing on behalf of the petitioners submits that by filing this frivolous suit, the valuable time and judicial hours has been wasted and more so, the defendants being the owners of the property, who despite their best efforts could not obtain the deed registered as

entered into between the present petitioners and the plaintiffs dated 23rd September, 2016. They have now entered into a separate agreement in the year 2017 and now the plaintiffs are trying to disturb their right, title, interest and only to harass the defendants, the suit has been filed. Accordingly, the suit had to be filed.

8. The learned advocate appearing on behalf of the opposite parties, on the other hand, raised objection and submits that the trial has commenced and the evidence has started. At this stage, taking out this application would cause further delay in disposal of the entire suit.
9. After hearing the submissions of both the learned advocates and considering the materials on record, the nature of suit and the application filed before the learned Trial Court, this Court finds that there is no reason to say that the learned Court has committed any mistake or error of law in refusing the prayer of the petitioners. It is a fact that no such application was filed under Order VII Rule 11 of the Code of Civil Procedure challenging the maintainability of the suit and on the contrary, the defendants have filed the written statement against the said plaint and thereby contesting the suit. However, it is a settled proposition of law that regarding the maintainability, the learned Court has enough

power to exercise its discretion as to whether the issue on the ground of maintainability will be framed by the learned Court or not as a preliminary issue. In this case, even if any such application is taken out on the ground of maintainability under appropriate provision of law by the defendants/petitioners that ought to have been dealt with by the learned Court.

10. However, in view of the above facts and circumstances, this Court do not find any reason to interfere with the order impugned and the instant revisional application is disposed of with a direction to the learned Court to frame a preliminary issue on the point of maintainability while disposing of the suit.
11. There shall be, however, no order as to costs.
12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(CHAITALI CHATTERJEE (DAS), J.)