

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS).

CO NO.2873 of 2005

MEHRAJ ALAM ANSARI

VS.

SK. MOFIJUL & ORS.

**For the Petitioner : Mr. Sounak Bhattacharya, Adv.,
Mr. Sounak Mandal, Adv.
Ms. Bipasha Bhattacharyya, Adv.**

For the O.P. NO.1 : Mr. Mohammad Mahmud, Adv.

Last heard on : 14.11.2025

Judgement on : 14.11.2025

Uploaded on : 17.11.2025

CHAITALI CHATTERJEE (DAS), J. :-

1. This revisional application is directed under Article 227 of the Constitution of India against an order dated 03rd July, 2025 passed by the learned Civil Judge (Junior Division), 4th Court, Howrah, in Title Suit No 737 of 2024 whereby the application filed under Order VII Rule 11 of the Code of Civil Procedure by the present petitioner has been rejected.
2. The fact of the case in a nutshell is that a suit being Title Suit No.1861 of 2023 was instituted on 13-12-2023 by the present opposite parties/plaintiffs was dismissed for default on 07th March, 2024. On 20th December, 2023, they

further instituted a Title Suit being Title Suit No.644 of 2023 against the present petitioner as defendants before the court of Civil Judge (Senior) Division with a prayer to declare their exclusive ownership and possession over the suit property at Howrah. Subsequently the Title suit no 1913 of 2023 was filed by the present petitioners as plaintiffs before the 4th court of Civil Judge (Junior) Division at Howrah and subsequent thereto the instant suit being Title Suit No.737 of 2024 was filed presently pending before the learned Civil Judge (Senior Division), 1st Court, Howrah.

3.In the said suit, the present petitioner /defendant challenged the maintainability of the suit by filing an application under Order VII Rule 11(a) to (d) of the Code on the ground that the plaintiffs /petitioner did not appear before the court with clean hands since it was filed with false and concocted facts ,suppressing filing of the previous suit on the alleged self-same cause of action and hence is clearly barred by law of the land . The said prayers of the defendant were turned down against which the petitioners/defendants have come before this Court.

4.It is contended before this Court by the learned advocate that the present opposite parties only in order to harass the present petitioner are filing numerous suit on different occasions with the similar nature of prayer by clever drafting ,against the present petitioner .It is further submitted that the Learned Trial Court erred in observing that cause of action is different in both the suits when it would be evident from close scrutiny of the contents of the

plaints that the prayers made in the plaint of those suits are almost similar in nature. Accordingly prays for setting aside the order impugned.

- 5.** Learned advocate appearing on behalf of the opposite party no.1 raises objection and submits that the prayers are absolutely different in two different suits and in no way, it can be said that there was no cause of action to file the suit and/or it can come within the ambit of Order VII Rule 11 of the Code. Furthermore the petitioner is not remediless and can very well maintain an application under Section 10 of the code of civil procedure if according to the petitioner two suits are pending between same parties with same cause of action however that cannot be the ground to reject the plaint. Accordingly, he prays for dismissal of the revisional application.
- 6.** Having heard learned counsel for both the sides and after going through the pleadings it transpires that series of suits have been filed by the present opposite parties against the present petitioner and the petitioner has also filed a suit against the present opposite parties.
- 7.** The first suit filed by the present opposite parties in the year 2023 was dismissed for default in the month of March, 2024 when no other suit was pending between the parties. The prayer made therein for declaration that the opposite parties are the exclusive owners and occupiers of the schedule property with a further prayer for a decree of declaration that the present petitioner has no right, title, interest and possession in the suit property. In the said suit also, permanent injunction was prayed for in respect of the suit

property and from encroaching any portion by demolishing the existing boundary wall.

- 8.** In the second suit filed by the present opposite parties being Title Suit No.644 of 2023, a prayer was made for declaration that the plaintiffs/opposite parties are the exclusive owners and occupiers of the schedule noted property and they have the lawful right to raise construction as per the sanctioned plan at the schedule noted property. They also prayed for a declaration that the present petitioner has no right, title and interest in the suit property neither he has any right to disturb the construction made as per the sanctioned plant.
- 9.** In the present suit being Title Suit No.737 of 2024, a specific prayer is made for a decree for declaration that the plaintiffs/opposite parties are the joint owners and occupiers of the schedule “A” noted property and a further decree for declaration that the present petitioner has no right to raise any illegal or unauthorized construction without obtaining any legal and valid sanctioned plan from the Zilla Parishad in respect of the “B” schedule property.
- 10.** On close scrutiny of the prayers made in all the three suits mentioned above some similarities are found and practically those are interlinked with each other. In the last suit only, the prayer has been made for a decree of further declaration regarding unauthorized construction.
- 11.** The learned trial Court was of the view that the cause of action of the two suits, that is, Title Suit No.737 of 2024 and Title Suit No.644 of 2023 are absolutely different and, therefore, the bar under Order II Rule 2 of the Code is not applicable. The dispute pertains to a dispute over the disputed property

where a construction is going on and both the parties are claiming right title interest over the same property.

12. In the case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali***¹, it is stated as under –

“The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted”.

13. It is settled proposition that while dealing with an application for rejection of plaint under Order 7, Rule 11 CPC, Court must enter into the disputed question of fact. Therefore this court refrains from entering into the merit of the case but on cursory glance of the nature of prayer made in the plaint it cannot be denied that the issues are interlinked with each other with regard to the construction of a multistoried building where the cause of actions are shown on different dates .However since different cause of actions may be arises from a common dispute unless it is adjudicated further, the same cannot be decided by this Court.

14. Fact remains it is not a case where there is no cause of action and further the suit pertains to determination of the right or interest of the parties for

¹ (2020) 7 SCC 366

which proper adjudication is necessary .More so order 2 rule 2 of the code focuses on ensuring all claims and remedies from the same cause of action are included in one suit and Res judicata precludes a party from re-litigating issues or claims that have already been adjudicated. In this case the earlier suit was dismissed for default when the date was fixed for hearing injunction application and no one turned up .It is trite that that in order to consider a prayer made under order VII Rule 11 CPC one has to read the entire content of the plaint and that can be done only by the trial court while adjudicating the case.

15. It is also settled by a catena of judicial pronouncement that those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the “jurisdiction of Court” and (b) which deal with the “bar to the suit created by any law for the time being in force only to avoid protracted litigation which can be decided by the learned Court by framing an issue on the point of maintainability of the suit based on the observations made above after the final hearing is over.

16. Therefore, in view of the above discussion, this Court is not inclined to interfere with the order passed by the learned trial Court. However, it is made clear that the learned trial Court while disposing of the case will consider the issue regarding maintainability of the suit as a preliminary issue.

17. In view of the above, this revisional application stands dismissed.

18. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

- 19.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

