

Court No. 6
(265719)

24.06.2025
(A 745)
(S. Banerjee)

CO 2729 of 2024

Shyamal Kumar Mitra
Vs.
Smt. Namita Bosey & Ors.

Mr. Subhabrata Das
Mr. Arindam Banerjee

...for the petitioner

Mr. Subhabrata Das
Mr. Arindam Banerjee

...for the opposite parties

Affidavit of service filed in Court today, is taken
on record.

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.
19 dated July 11, 2024 passed by the learned Civil
Judge (Jr. Division), 1st Court, Hooghly at Chinsurah
passed in Title Suit No. 725 of 2022. By the order
impugned the application under Order 7 Rule 11 of
the Civil Procedure Code, stood rejected.

The opposite parties filed a suit for declaration
that they are the absolute owner of one and a half
share of the scheduled property and owner of the rest
half only with restriction of alienation at life time of
Syamal Kumar Mitra and for permanent injunction.

In such a suit the petitioner filed an application under Order 7 Rule 11 of the Civil Procedure Code which stood rejected by the order impugned.

Mr. Das, learned advocate appearing for the petitioner submits that upon a proper construction of the deed of settlement it would be evident that the plaintiffs would not have acquired any right, title and interest in the suit property. He, therefore, submits that the plaint fails to disclose a cause of action for which the same was liable to be rejected.

Heard the learned advocate appearing for the opposite parties on such submission. He submits that the court while deciding an application under Order 7 Rule 11 of the Civil Procedure Code has to restrict itself only with regard to the averments made in the plaint.

Heard the learned advocates for the parties and perused the materials placed.

After going through the application under Order 7 Rule 11 of the Civil Procedure Code, this court finds that the petitioner has sought to put an interpretation on the deed of settlement which, according to the petitioner, is a conditional one. It has been further stated in the said application that after the demise of the first settlor Dilip Kumar Mitra, the ownership of

the suit property would devolve upon the defendant namely Shyamal Kumar Mitra and not upon the plaintiffs.

While interpreting a deed, the intention of the executant has to be taken into consideration. Therefore, interpretation of the deed cannot be done at the stage of Order 7 Rule 11 of the Code. Upon a reading of the plaint, this court finds that the plaint discloses a cause of action and the same does not appear to be barred by law.

The issues raised in the application under Order 7 Rule 11 of the Civil Procedure Code requires an adjudication on facts by way of trial on evidence. The same cannot be done at the stage of hearing of an application under Order 7 Rule 11 of the Code. The learned trial judge applied the correct legal tests while deciding the application under Order 7 Rule 11 of the Code. For such reasons, this court is not inclined to interfere with the order impugned.

At this stage Mr. Das, learned advocate appearing for the petitioner prays for a direction upon the learned trial judge to dispose of the suit expeditiously.

In the light of the submissions made by the learned advocate appearing for the petitioner, CO

2729 of 2024 stands disposed of by requesting the learned Civil Judge (Jr. Division), 1st Court Hooghly at Chinsurah to make an endeavour to see that Title Suit No. 725 of 2022 is disposed of as expeditiously as possible without granting any unnecessary adjournment to either of the parties provided, the suit is otherwise ready for hearing.

(Hiranmay Bhattacharyya, J.)