

C.O. 2915 of 2024

**Mira Jana & Ors.
versus
Maheswar Pandit & Ors.**

Mr. Debjit Mukherjee
Ms. Susmita Chatterjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana

...For the petitioners

Mr. I.Mukherjee

...For the opposite parties

- 1.** The present revisional application has been filed, inter alia, challenging the order dated 21st June 2024 passed in T.S. 115 of 2009 rejecting the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the “Code”).
- 2.** Mr. Mukherjee, learned advocate appearing in support of the instant revisional application on behalf of the defendant nos.1(a), 1(b) and 2, by drawing attention of this Court to the copy of the plaint would submit that the plot numbers which form subject matter of the suit are thika properties within the meaning of the West Bengal Thika Tenancy (Acquisition and Regulation)_ Act, 2001 (hereinafter referred to as the “said Act”). Having regard thereto and in the light of the provisions contained in Section 21 of the said Act, a civil Court is barred from entertaining a suit in relation to a thika property. He submits that this aspect had not been properly considered by the Learned Judge while rejecting the application under Order VII Rule 11 of the Code. It is submitted that since the plaint is barred by law, the Learned Trial Judge ought to have rejected the same. Non-rejection of the plaint which is barred by law is a failure to exercise jurisdiction and this Court is competent to correct such jurisdictional error and reject the plaint.
- 3.** Mr. Mukherjee, learned advocate appearing for the plaintiffs/opposite party nos.1 to 7 would submit that it is well settled that a Court while deciding an application under Order VII Rule 11 of the Code is only required to

consider the plaint and the documents appended thereto and no other documents. Therefore, the defence case cannot be taken into consideration. He submits that the Learned Judge has rightly rejected the application under Order VII Rule 11 of the Code and no interference is called for.

- 4.** Heard the learned advocates appearing for the respective parties and considered the materials on record.
- 5.** I find that the Learned Judge by order dated 21st June 2024 has proceeded to conclude that on the basis of the statement made in the plaint a decision is required to be taken on an application under Order VII Rule 11 of the Code. He has also noted that it is not permissible to cull out a sentence or a passage from the plaint to read it in isolation. I find that this is one of the objections raised by the petitioners. The learned advocate for the petitioners submits that if even from a particular sentence from the plaint it transpires that the suit is barred by law, the Court should reject the plaint. In this context, I must note that the petitioners cannot be permitted to cull out a particular line from the plaint for making out a case of rejection, and to read it out of context to the plaint case, however, what is necessary is a meaningful reading of the plaint to understand whether a case for rejection of the plaint has been made out.
- 6.** In the instant case as noted above, from a perusal of the plaint which has been disclosed before this Court and as rightly pointed out by Mr. Mukhejee, learned advocate for the opposite party nos.1 to 7 that from the documents disclosed along with the plaint it would not transpire that the same is a thika property. However, if the documents are read in conjunction with the defence case, the same may make

out a case made in favour of the petitioners. This is, however, not the stage to go into such issue.

- 7.** Having regard thereto, no case for interference has been made out and the civil revisional application fails.
- 8.** At this stage, Mr. Mukherjee, learned advocate appearing for the petitioners submits that the petitioner no. 3 is a cancer patient. Accordingly, he submits that an order may be passed for expeditious disposal of the suit which has been pending since 2009.
- 9.** Considering such submission and noting the fact that the above suit has been pending since 2009 before the Learned Civil Judge (Junior Division), 2nd Court Howrah, I am of the view that the Learned Trial Judge should take expeditious steps to dispose of the suit by concluding hearing within a period of one year from date.
- 10.** With the above observation and direction C.O. 2915 of 2024 is dismissed without any order as to costs.
- 11.** All parties shall act on the basis of the server copy of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)