

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 3407 of 2015

With

CAN 03 of 2022

SHRI GAUTAM KUMAR PINCHA

-Vs-

SMT. ASHA DEVI BAJAJ & ORS.

For the petitioner : Mr. Gautam Kumar Pincha
(Petitioner, in-person)

For the Opposite Party No.1. : Mr. Anirban Ray, Sr. Adv.,
Mr. Sidhartha Sharma,
Mr. Rishav Dutt,
Md. Danish Taslim,
Ms. Ayesha Iman.

Last heard on : 29.01.2025

Judgment on : 12.03.2025

Biswajit Basu, J.

1. The defendant no. 2, in a suit for specific performance of agreement, is the petitioner of the instant application under Article 227 of the Constitution of India which is directed against order no. 16 dated May

08, 2015 passed by the 2nd Court of the learned Civil Judge (Senior Division) at Barasat, District: 24 Parganas (North) in the said suit being *Title Suit No. 235 of 2013*.

2. The petitioner, in the said suit, had filed an application under Order VII Rule 11 of the Code of Civil Procedure praying rejection of the plaint of the said suit on the grounds that the suit property is a “*Government land*” as defined under Section 2(e) of the *West Bengal Government Land (Regulation of Transfer) Act, 1993* (hereinafter referred to as the ‘*said act of 1993*’ in short); as such, in terms of section(s) 4 & 6 thereof, the suit property cannot be transferred without written permission from the competent authority; besides, there is a similar restriction under clause(s) 7 & 8 of the deed of lease whereby the suit property was settled in favour of the defendant no.1; therefore, when no such permission is obtained, the suit is not maintainable; moreover, under Section 21 of the said act of 1993, the jurisdiction of the Civil Court since is barred to deal with any question which is required to be decided or dealt with under the provisions of the said Act of 1993, the learned Trial Judge has no jurisdiction to entertain the said suit. The plaintiff had contested the said application by filing a written objection.
3. The learned Trial Judge, by the order impugned, had dismissed the said application holding, *inter alia*, that a decree for specific performance of sale of land which is subject of the Government or any

other authority is well maintainable and while granting the decree, the Court has the jurisdiction to order the vendor to apply to the authority within a specific period and if the sanction is forthcoming, to convey the same to the purchaser within a certain time.

4. The petitioner had challenged the aforesaid order in C.O. 3407 of 2015. The learned Single Judge of this Court, by the judgment and order dated April 27, 2016 had allowed the said application on contest; thereby, had rejected the plaint of the said suit by setting aside the order of the learned Trial Judge, holding *inter alia*, that the suit land since belongs to the State; compliance of the condition imposed on its transfer is mandatory.
5. The opposite party no.1, aggrieved by the said judgment and order, had preferred an appeal being *Civil Appeal No. 8777 of 2016*. The Hon'ble Supreme Court, by the order dated September 05, 2016, had set aside the order of the High Court and had disposed of the said appeal with the following observations:-

"The short point involved in this case is that certain documents, namely, tenancy, agreement dated 04.12.2007 as also a copy of the assignment agreement of the same date between the appellant and the defendant no. 1/respondent No. 2 herein are neither filed in these proceedings nor the same were produced along with the plaint or before the High Court in the Civil Revision Petition proceedings. Therefore, it is open for the appellant to produce these documents before the High Court. We request the High Court to examine the same and pass appropriate order in accordance with law in the Civil Revision Petition proceedings on the application under Order 7 Rule 11 of the Civil Procedure Code expeditiously.

In view of the aforesaid, the appeal is allowed and the impugned judgment and order passed by the High Court is set aside.”

6. The plaintiff, in terms of the order of the Hon’ble Supreme Court, under an affidavit affirmed on November 11, 2016 had filed two documents viz. supplementary agreement for tenancy and an agreement for assignment both dated December 04, 2007. The petitioner thereafter on March 14, 2017 had affirmed an affidavit-in-opposition to the aforementioned affidavit of the plaintiff. The petitioner, in the said affidavit had annexed photocopy of a registered deed of sub-lease dated December 30, 2011 executed by the defendant no. 1 (since deceased) in favour of the plaintiff alleging that upon execution of the said deed, all co-lateral agreements including the purported agreement for assignment dated December 04, 2007 have expired; as such, the suit is not maintainable. The petitioner thereafter had filed two supplementary affidavits, one affirmed on December 18, 2018, the other affirmed on May 02, 2024 annexing copy of some more documents. The parties have also filed several written notes on their arguments.
7. The petitioner is alleging that besides the two documents which the plaintiff has filed in terms of the order of the Hon’ble Supreme Court, the following being admitted documents, the maintainability of the suit may be decided on the basis of those documents also:-

- i. Deed of Declaration dated December 04, 2007,
- ii. Agreement for Tenancy dated June 25, 2004,
- iii. Registered Power of Attorney dated September 20, 2011 executed by the defendant no.1 in favour of the plaintiff,
- iv. Registered Will dated September 20, 2011, executed by the defendant no.1 in favour of the plaintiff,
- v. Registered Deed of Assignment of Sub-lease dated December 30, 2011 executed by the defendant no.1 in favour of the plaintiff,
- vi. Registered Deed of Surrender dated December 30, 2011 executed in favour of the Plaintiff,
- vii. Deed of Lease dated January 29, 1977 between the State of West Bengal and the Defendant no.1,
- viii. Registered Deed of Assignment dated November 26, 2012 executed by the defendant no.1 in favour of the defendant no.2,
- ix. Agreement for Assignment dated June 29, 1992 executed by the defendant no.1 in favour of Gita Devi Bajaj.

8. Mr. Pincha, the petitioner appearing in person, relying on the decision of the Hon'ble Supreme Court in the case of ***DAHIBEN Vs. ARVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS*** reported in ***(2020) 7 SCC 366*** submits that the aforementioned documents being admitted by the plaintiff and are forming the basis of the plaint, as such, the maintainability of the suit must be addressed by taking those documents in their entirety into consideration. Mr. Anirban Ray,

learned Government Pleader, appearing on behalf of the plaintiff, submits that the issue of maintainability may be decided as a preliminary issue.

Heard the petitioner and the learned advocate for the opposite parties, perused the materials-on-record.

9. At one stage of the proceeding, the parties had agreed to resolve their dispute amicably; but ultimately, the said effort was not successful. The Hon'ble Supreme Court, by its order dated September 05, 2016, had permitted the plaintiff to file two documents, but the parties, by filing numerous documents and by inviting the Court to decide the maintainability of the suit on the basis of those documents, have enlarged the scope of the order of remand. In the application under Order VII Rule 11 of the Code, the defendant no.2 did not invite the learned Trial judge to examine the documents on which he is now relying upon to question the maintainability of the suit; consequently, the plaintiff is yet to get an opportunity to rebut the allegation of the defendant no.2; therefore, this Court is of the opinion that the parties should get the opportunity to prove their respective cases regarding the maintainability of the suit on the basis of the aforementioned documents before the learned Trial Judge.

Accordingly, the order impugned is *set aside*. The defendant no.2 is permitted to amend the application under Order VII Rule 11 of the Code to disclose all the grounds and documents on which he is

inviting the Court to decide the maintainability of the suit; let such amendment be carried out within a period of **two weeks** from date. The plaintiff shall be given the opportunity to file written objection to the amended application under Order VII Rule 11 of the Code. The learned Trial Judge is requested to decide the application as expeditiously as possible in accordance with law.

C.O 3407 of 2015 is allowed with the above terms, the connected application being **CAN 03 of 2022** is therefore disposed of accordingly. There shall be no order as to costs.

Parties to act on the server copy of this judgment duly downloaded from the official *website* of this Court.

Urgent Photostat copies of this judgment, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(BISWAJIT BASU, J.)