

28.11.2025
428
Ct. no. 29
sb

CO 3857 of 2024

**Sri Niladri Nandan Halder
Vs.
Sri Iswar Dadhi Baman Salagram
Thakur Jew & Ors.**

Mr. Anshuman Chakraborty
Mr. Prasanta Bishal ...for the O.P. nos.
2(i) & 2(iii)

Mr. Sounak Bhattacharya
Mr. Sounak Mondal ...for the O.P. no. 3

In spite of service of notice upon the learned counsel for the petitioner, petitioner is not represented.

This application has been preferred against the order dated 26.6.2023 by which the court below rejected the petitioner's application under Order VII rule 11 of the Code of Civil Procedure.

Petitioner herein filed an application under Order VII rule 11 of the Code before the court below contending that the plaintiff has no cause of action to institute the instant suit since the defendants are only entitled to continue with the Seva Puja in respect of the private trust created by Bijay Krishna Bandyopadhyay and the Seva Puja is strictly confined to the member of the Bandyopadhyay family. No outsider or any villager can claim any right title or interest in the said private trust. However, the plaintiffs/opposite parties herein claimed that they

are villagers and the property in question has become public debottar property and they are the representatives of public at large and thereby filed the suit. Such suit is not maintainable since they have also not taken proper authority and they are completely outsider in connection with the said private debottar property. In fact, the plaintiffs have filed the suit on the basis of untrue allegations and therefore, the plaint is liable to be rejected.

The opposite parties herein as plaintiffs filed written objection against the said petition and the learned court below after hearing both the parties, came to a finding that there is a dispute regarding the nature of Debottar in the suit property which is required to be determined and it is also required to ascertain whether the plaintiff deity has been converted to a public debottar and whether the plaintiffs will be entitled to continue with the suit or not. He further noted that the plaintiff no. 3 is a family member of the executor of deed of Arpannama and he further noted that a question regarding misappropriation of deity's property is also involved in the suit. The question as to whether the trust is absolutely private in nature or not is also required to be adjudicated. Accordingly, the court below concluded that since all these issues are required to be decided on the basis of evidence to be adduced by

the parties, so he declined to allow the plaintiff's prayer for rejection of the plaint.

Having considered the submissions made by learned counsel for the opposite party nos. 2(i) and 2(iii), and having gone through the contents of the plaint, it appears that the plaintiff has categorically stated the cause of action in various paragraphs in the plaint including paragraph 16, paragraph 5 and 6 of the plaint.

This High Court in the cause of **British Airways Vs. Antwork Export Ltd. (AIR 1986 Cal 120)** followed the consistent view that the ground of rejection of plaint under Order VIII, Rule 11(a) must appear on the face of the plaint and therefore the correctness of plaintiffs plea that the property in question has been converted into a public debutter property is beyond the purview of that provision.

It is well settled that cause of action means every fact which would be necessary for the plaintiffs to prove, if traversed, in order to support his right of judgment. Here plaintiff case comprises of bundle of material facts, that the property in question has taken the shape of public debutter with the passage of time, which would be necessary for the plaintiff to prove, in order to entitle him to the reliefs claimed in the suit. **[Swamy Atmananda Vs. Sri Ramkrishna Tapovanam, (2005) 10 SCC 51 relied]**

In **Mandanuri Sri Rama Chandra Murthy Vs. Syed Jalal, (2017) 13 SCC 174**, Supreme Court made specific observation in Para 7 of the judgment that since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII, Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to.

Therefore the litmus test to adjudicate such issue by a court of law would be to read the plaint meaning fully and as a whole, taking it to be true and if upon such reading, plaint discloses a cause of action, the prayer for rejection of plaint on the ground of non-disclosure of cause of action shall not succeed. There is always a distinction between the non-disclosure of cause of action in the plaint and the absence of cause of action for the suit. On bare perusal of the plaint in the instant case, there is hardly any scope to say that the plaint does not disclose cause of action.

In such circumstances, the order impugned does not call for any interference by this court by invoking this court's jurisdiction under Article 227 of the Constitution of India as it does not suffer from any illegality or perversity nor the order impugned passed by court below resulted in any gross or manifest failure of justice.

Accordingly, the revisional application being C.O. 3857 of 2024 stands dismissed.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)