

M/L- 32
01/09/2025
Ct. No.-6
Aritra

C.O. 4341 of 2024
Chandana Chatterjee
Vs.
Smt. Sarama Basak & Anr.

Mr. Koushik Bhatta
Ms. Trisha Dutta

....for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order being No.14 dated September 9, 2024 passed by the learned Judge, 10th Bench, City Civil Court at Calcutta in Title Suit No.1015 of 2023.

By the order impugned, the application under Order 7 Rule 11 of the Code of Civil Procedure stood rejected.

The learned advocate appearing for the petitioner submits that the plaintiffs/opposite parties herein are claiming declaration of their right, title and interest in respect of the property by way of adverse possession. He submits that the property in respect of which the plaintiffs/opposite parties are claiming right, title and interest did not exist at any point of time. He further submits that the petitioner herein took possession of that the suit property by executing the decree passed against the husband of the present plaintiffs/opposite parties herein. He submits that the instant suit was filed by

suppressing the material facts. He further submits that the plaint fails to disclose a cause of action for which the same is liable to be rejected.

The plaintiffs/opposite parties herein filed a suit praying for declaration that the plaintiffs have right, title and interest over the suit property which is acquired by the plaintiffs by way of adverse possession and for permanent injunction restraining the petitioner from dispossessing the opposite parties from their existing possession and for permanent injunction restraining the petitioner from demolishing the existing structure of the suit building. It has been stated in the plaint that the opposite parties are occupying the schedule room adversely against the right, title and interest of the petitioners and they are residing and occupying the shop room without any interruption or disturbance or objection from anyone including the owner of the schedule room. It has been further stated in the plaint that the petitioner herein along with some antisocial elements tried to dispossess the opposite parties from their existing possession and they were trying to demolish the existing structure in order to raise a multistoried building by dispossessing the plaintiffs/opposite parties from their existing possession.

Order 7 Rule 11 of the Code of Civil Procedure states that the plaint shall be rejected in case it does not disclose a cause of action. It is well-settled that while

deciding an application under Order 7 Rule 11 of the Code of Civil Procedure only the averments made in the plaint are to be looked into. It is equally well-settled that while deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, the plaint averments are to be treated as true and correct.

After going through the averments made in the plaint this Court is of the considered view that the cause of action has been disclosed in the plaint. Whether the plaintiffs would ultimately succeed in the suit would depend upon the case of the plaintiff and defence of the petitioner and the evidences that may be led by the respective parties at the time of trial. Whether the suit was filed by suppressing the material facts or whether the opposite parties had succeeded in proving their right, title, interest and possession in respect of the suit property are disputed questions of fact and, therefore, cannot be decided while adjudicating an application under Order 7 Rule 11 of the Code of Civil Procedure. The same can only be decided by trial on evidence.

The learned advocate appearing for the petitioner would contend that while deciding an application under Order 7 Rule 11 of the Code of Civil Procedure, the documents annexed to the plaint are to be looked into. In course of his argument, he placed reliance upon a letter of complaint made by the plaintiffs/opposite parties herein to the Officer-in-Charge, Amherst Street Police

Station, wherein there was a reference of a miscellaneous case which was pending before the learned Judge, 10th Bench, City Civil Court at Calcutta. The learned advocate appearing for the petitioner further submits that in the said letter of complaint the plaintiffs have claimed to be the tenants of the suit property and in the plaint they have claimed adverse possession. He further submits that from the address mentioned in the complaint letter it shows that they are residing elsewhere. Merely because of the fact that the plaintiffs/opposite parties have mentioned a different address in the letter of complaint the same does not take away the right of the plaintiffs/opposite parties in respect of the suit property. Whether the plaintiffs/opposite parties have any right, title and interest in respect of the suit property can be decided at the time of final hearing of the suit.

The learned trial judge has assigned cogent reasons for rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure.

This Court is not inclined to interfere with the said order.

Accordingly, CO 4341 of 2024 stands dismissed.

After this order was passed, the learned advocate for the petitioner prays that the hearing of the suit be expedited. He further submits that the written statement has already been filed.

The learned trial judge is requested to make an endeavour to dispose of the Title Suit No.1015 of 2023 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)