

JPS-03  
Ct No.01  
25.07.2025  
AK

Calcutta High Court  
In The Circuit Bench at Jalpaiguri  
Civil Appellate Jurisdiction

**C.O. 42 of 2025**

Sri Khatimul Haque and others  
Vs  
Mashihar Rahaman and others

Mr. Soumyajyoti Dutt  
Ms. Nikita Agarwal

.... for the petitioners.

Mr. Bhaskar Roy Mahasaya  
Ms. Ambika Ghosh

...for the opposite parties.

- 1.** The present revisional application has been preferred against an order whereby an application filed by the present petitioners, who were co-defendants in the suit, under Order VII Rule 11 of the Code of Civil Procedure, for rejection of the plaint, was turned down.
- 2.** Learned counsel for the petitioners argues that in the plaint of the partition suit from which the revision arises, the plaintiffs/opposite parties have claimed that the plaintiffs were facing inconvenience in peaceful enjoyment of their share with the defendant nos.1 to 5 and that the defendant nos.1 to 5 are co-sharers of the suit plot.
- 3.** As such, no cause of action is disclosed in the plaint for filing the partition suit insofar as the

defendant nos. 6 to 17, including the present petitioners, are concerned.

4. Learned counsel cites an unreported judgment of this court dated August 28, 2019 in CO No. 57 of 2019 (*The Beekay Plaza Private Ltd. & ors. vs. Basanti De Sarkar & Ors.*) where the court had held that merely because it is pleaded in the plaint that some of the defendants claimed to have title in respect of a portion of the suit property, although their title to the property was not admitted by the plaintiffs, no cause of action was disclosed against the said defendants.
5. As such, it was held that the arraignment of the said defendants as parties, against whom no cause of action was disclosed, was not proper.
6. Accordingly, the plaint of the said suit was rejected by this court.
7. Learned counsel appearing for the opposite parties opposes the contention of the petitioners and points out that in paragraph no. 14 of the plaint, cause of action has been disclosed against the present petitioners.
8. A perusal of the plaint shows that in paragraph no. 1 of the plaint, certain persons are mentioned to be the recorded tenants in respect of the suit property.

- 9.** In paragraph no. 2 thereof, it is further stated that except the said recorded tenants, there are no other co-sharers of the suit plots.
- 10.** Again, in paragraph no. 9 of the plaint, it has been stated that the plaintiffs and defendant nos.1 to 5 are the co-sharers of the suit plot and Khatiyani and such suit plot and Khatiyani have not been partitioned by metes and bounds amongst the co-sharers.
- 11.** However, in paragraph no. 11 of the plaint, it has been stated that as the plaintiff and the “defendants” are co-sharers, so they are possessing their respective shares jointly by way of amicable settlement.
- 12.** Again, in paragraph no. 14, it has been stated that the defendant nos. 6 to 17 came over the suit land and are claiming to be the co-sharers of the suit land by way of purchase from the predecessor of the plaintiffs and on such claim the plaintiffs have demanded from them to show any such documents in support of such claim which allegedly the said defendants have failed to show.
- 13.** In paragraph no. 15 of the plaint, again, it has been alleged that the defendant nos.6 to 17, in collusion with the defendant nos. 1 to 5, are trying to disturb the peaceful share of the plaintiffs and

also trying to change the nature and character of the suit property.

- 14.** As opposed to the cited judgment, in the present case semblance of pleadings are present in the plaint to indicate that all the defendants are co-sharers in respect of the property.
- 15.** Although there is some contradiction in the plaint pleadings inasmuch as in paragraph nos. 2 and 9 it has been claimed that the plaintiffs and the defendant nos. 1 to 5 are the co-sharers whereas in paragraph no. 11 the plaintiff and all the defendants have been claimed to be so, such contradiction can be canvassed at the time of hearing of the suit upon a judgment on trial.
- 16.** The statement in paragraph no. 14 of the plaint to the extent that the defendant nos. 6 to 17 are claiming to be co-sharers of the suit property by purchase has to be read in conjunction with paragraph nos. 9 as well as 11 of the plaint.
- 17.** As such, it cannot be said outright, merely because there is a contradiction in the claims, that no cause of action whatsoever has been disclosed against the defendant nos. 6 to 17.
- 18.** Thus, it would be premature at this stage for the court to reject the plaint by holding that no cause of action has been disclosed against the defendant nos. 6 to 17.

19. In such view of the matter, there is no scope of interference with the impugned order whereby the application filed by the present petitioners under Order VII Rule 11 of the Code was rejected.
20. Accordingly, C.O. 42 of 2025 is disposed of without interfering with the impugned order but keeping it open for the parties to argue as to whether the defendant nos. 6 to 17 are co-sharers of the suit property or not.
21. It is further made clear that nothing in this order shall prevent the defendant nos. 6 to 17 from urging the perceived contradiction in the plaint pleadings in that regard at the time of trial.
22. Since the suit is pending since 2019, it is expected that the same shall be disposed of at the earliest, preferably within one year from the date of communication of this order to the learned trial Judge.
23. There will be no order as to costs.
24. Urgent certified copies, if applied for, be given to the parties upon compliance of all formalities.

**(Sabyasachi Bhattacharyya, J.)**