

(2010) 09 CAL CK 0026

Calcutta High Court

Case No: C.O. No.1248 of 2008

North Bengal Bone
Mills and Fertilizers Pvt.
Ltd.

APPELLANT

Vs

Nilima Bose and Others

RESPONDENT

Date of Decision: Sept. 8, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 10
- West Bengal Land Reforms Act, 1955 - Section 51(C)

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Satyajit Talukdar, for the Appellant; None Appears, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the defendant No. 1 and is directed against the order No. 87 dated February 27, 2008 passed by the learned Civil Judge (Junior Division) at Siliguri in Title Suit No. 233 of 2003.

2. The plaintiff/opposite party instituted the suit being Title Suit No. 233 of 2003 for permanent injunction against the defendants and the proforma opposite parties. He has prayed for a decree of permanent injunction restraining the defendants from entering into the suit land and permanent injunction restraining the defendants from accumulating any building materials on the suit land and other reliefs. In that suit, the defendant No. 1 appeared and filed an application under Order 7 Rule 11 read with Section 10 of the CPC for rejection of the plaint. That application was rejected on contest by the order impugned. Being aggrieved, the defendant No. 1 has preferred this application.

3. Now the point for decision is whether the impugned order can be sustained.

4. Upon hearing the learned Advocate for the petitioner and on perusal of the materials on record, I find that the plaintiff filed the suit only for permanent injunction. He did not pray for declaration of his title or any relief for rectification of the record of rights. But, on perusal of the plaint case as a whole, I find that the plaintiff has admitted that one Fagu Goyala was a bargadar in respect of the suit land. He was in possession of the suit land. A settlement was arrived between the owner and Fagu Goyala and as a result, Fagu Goyala was in exclusive possession of certain lands. According to the plaint case, Fagu Goyala possessed only .27 acres of land. The predecessor of the plaintiffs possessed 2.77 acres of land and this is the suit land. The plaintiff admits that in 1993 her predecessor-in-interest namely Sushil Kumar Bose learnt that the names of the defendant has been recorded by exercise of fraud and utter violence of due process of law. Therefore, as long as back in 1993, the plaintiff was very much aware that the suit land has been recorded in the name of the defendants. Thereafter, according to the plaint case, the brother of the plaintiff informed the B.L. & L.R.O. Officer, Siliguri about such discrepancy but on receiving no redress from his end, an application dated August 26, 1993 was submitted to the D.L. & L.R.O. Officer, Darjeeling seeking redress. But in spite of that the names of the defendants from the record of rights could not be changed.
5. Thus, from the above facts, it is clear that the plaintiff knew very well that the suit land had been recorded in the name of the defendants. But she did not seek for relief for correction of the record of rights. On the other hand, it can be also decided that she took steps for correction of the records by approaching the B.L. & L.R.O. first and then to the D.L. & L.R.O., Darjeeling. But, she failed. Ultimately, from the plaint, I find that the plaintiff filed an application before the West Bengal Land Reforms and Tenancy Tribunal on November 17, 2003 being the O.A. No. 3858 of 2003 for directing upon the concerned B.L. & L.R.O. to make a detailed investigation as to the rightful owner of the suit plots and that application is pending. During argument, it is submitted by the learned Advocate for the petitioner that the said application filed before the land Tribunal has been dismissed.
6. Copy of the order of dismissal of the application before the learned Tribunal has been filed and it appears that the said application was dismissed on the ground that a title suit (the present suit) is pending between the parties and it will be proper to decide the rights of the parties with regard to the suit land in that suit. Therefore, I find that the said application was not disposed of on merits. But for the reasons, that this suit is pending between the parties.
7. This being the position, in consideration of the relief sought for, it is clear that the R. S. record of rights in respect of the suit property stands in the name of the defendants and in consideration of the relief sought for, it is clear that the plaintiff is doubtful whether she has possession over the suit property. The plaintiff did not pray for any declaration of her title with regard to the suit land, nor did she pray for correction of the record of rights already recorded in the name of the defendants.

8. The suit has been filed for permanent injunction without declaration that the record of rights is wrong possibly on the ground to bypass the provisions of Section 51C of the West Bengal Land Reforms Act. Anyway, at present I find that suit is not barred by any provision of any Act, not even by the provisions of the West Bengal Land Reforms Act, 1955.

9. The learned Advocate for the petitioner has referred to the decisions of *Hardesh Ores (P) Ltd. v. Hede and Com.* reported in (2007) 5 SC 614 and submits that the ratio is that when the suit is barred by limitation, the application would come under the provisions of Order 7 Rule 11(d) and so, the Court can reject the plaint. This is not the situation in the present application.

10. Another decision placed by the learned Advocate for the petitioner in the case of *Sachin Ghosh and Ors. v. Niranjana Chandra Ghosh and Ors.* reported in (2004) 1 WBLR (Cal) 236. In that decision the court observed that simple suit for injunction is not maintainable without seeking other relief including the correction of records. But that decision was held in a second appeal before the Hon'ble High Court at Calcutta. Therefore, there was scope for consideration of the defence stand of the defendant of the suit. In the instant case, simply on perusal of the plaint, I do not find that the suit is barred by any law.

11. The learned Advocate for the petitioner has also referred to the decision in the case of [T. Arivandandam Vs. T.V. Satyapal and Another](#), . This decision lays down that false and vexatious plaint should be curbed but in the instant case on perusal of the plaint, it cannot be held that a false and vexatious suit has been filed. Therefore, this decision, I am of the view, is not also applicable in the instant suit.

12. In the result, I am of the view that the suit does not come within the provisions of Order 7 Rule 11 read with Section 10 of the C.P.C. at all.

13. Therefore, the learned Trial Judge was justified in rejecting the application by the impugned order. There is nothing to interfere with the impugned order. Accordingly, this application is dismissed.

14. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.