

**(2004) 07 CAL CK 0011**

**Calcutta High Court**

**Case No:** G.A. No. 2370 of 2004 and C.S. No. 168 of 2002

Hem Prakash Surana and  
Another

APPELLANT

Vs

Bijay Singh Surana and Others

RESPONDENT

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**Date of Decision:** July 8, 2004

**Citation:** (2005) 1 CHN 565

**Hon'ble Judges:** Subhro Kamal Mukherjee, J

**Bench:** Single Bench

**Advocate:** Bimal Kumar Chatterjee, Surojit Nath Mitra and A. Chakraborty, for the Appellant; Abhrajit Mitra and Pratik Prakash Banerjee, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Subhro Kamal Mukherjee, J.

The plaint in this suit was presented on June 28, 2004. The plaint was admitted subject, however, to scrutiny by the department.

2. In connection with the said suit an interlocutory application, inter alia, for appointment of receiver and injunction being G. A. No. 2370 of 2004 is filed by the plaintiff. When the said interlocutory application is moved, upon notice to the learned advocates for the caveators, it is submitted by the learned advocates for the caveators that the suit is not maintainable before this Court.

3. My attention has been drawn to paragraph 28 of the plaint of this suit, which runs as under:

"28. For the purpose of Court-fees and jurisdiction, this Suit is valued at Rs, 10,00,000/- and appropriate ad volarem Court-fees has been paid thereon. The plaintiffs undertake to put in further Court-fees in the event of those paid are found deficient."

4. Mr. Bimal Kumar Chatterjee, learned senior advocate, appearing on behalf of the plaintiffs, in the aforesaid circumstances, prays for leave to withdraw this suit and the said interlocutory application with liberty to the plaintiffs to file fresh suit on the self-same cause of action.

5. Mr. Abhrajit Mitra and Mr. Pratik Prakash Banerjee, learned advocates, appearing for the defendants, however, object to such prayer regarding liberty to the plaintiffs to file fresh suit on the self-same cause of action.

6. Under the City Civil Court Act, 1953, as amended by West Bengal Act No. 28 of 1990, City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature not exceeding Rs. 10,00,000/- in value. Admittedly, the suit is valued, for the purpose of Court-fees and jurisdiction, at Rs. 10,00,000/- and as such the present suit is to be entertained and tried by the City Civil Court and this Court has no jurisdiction to entertain and try this suit. There is no defect in the plaint. Only to enable the plaintiffs to file a fresh suit invoking the jurisdiction of this Court liberty cannot be granted to the plaintiffs to withdraw this suit with liberty to file fresh suit on the self-same cause of action.

7. In my view, justice will be subserved if I direct the office of this Court to return the plaint and the interlocutory application to the learned advocate-on-record for the plaintiffs for presentation of the plaint and the said interlocutory application before the City Civil Court at Calcutta inasmuch as this suit should have been instituted in the City Civil Court at Calcutta.

8. I, therefore, direct the office to return the plaint and interlocutory application to the learned advocate-on-record of the plaintiffs with liberty to the plaintiffs to file them in the City Civil Court at Calcutta.

9. I make no order as to costs.

10. The office, the learned Registrar, City Civil Court at Calcutta and all parties are to act on a signed xerox copy of this dictated order on usual undertaking.