

(2011) 08 CAL CK 0135

Calcutta High Court

Case No: C.O. No. 1392 of 2011

Md. Ali and Others

APPELLANT

Vs

Abul Barkat and Others

RESPONDENT

Date of Decision: Aug. 3, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, Order 9 Rule 9

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Amitava Mukherjee and Sandipan Banerjee, for the Appellant; Ramdulal Manna and Sabyasachi Mondal, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

Challenge is to the Order No. 69 dated February 22, 2011 passed by the learned Civil Judge (Junior Division), 2nd Court, Malda in Title Suit No. 213 of 2001 thereby dismissing an application under Order 7 Rule 11 of the Code of Civil Procedure

2. The Plaintiffs/opposite parties herein instituted a suit being Title Suit No. 196 of 1992 before the learned Munsif, 2nd Court, Malda for declaration of title and permanent injunction in respect of the property in suit against the Petitioners. The said suit was dismissed for default on May 20, 2000. Thereafter, the Plaintiffs filed another title suit, that is, Title Suit No. 213 of 2001 over the selfsame property against the Petitioners for the selfsame relief. The Petitioners are contesting the said suit and they filed an application under Order 7 Rule 11 of the CPC and that application was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the earlier suit being Title Suit No. 196 of 1992 filed by the Plaintiff was dismissed on May 20, 2000. The averments of the earlier plaint and the plaint of the present suit are almost similar except mentioning that the Defendants threatened to dispossess the Plaintiffs on August 30, 2010 and for that reason, the instant suit has been preferred. Though, in the instant suit, the Plaintiffs have stated the cause of action on August 30, 2000. I am of the view that on the selfsame set of facts, the instant suit has been filed in spite of the dismissal of the earlier suit. The cause of action as noted on August 30, 2010 is not the actual cause of action to institute the suit. The cause of action means a bundle of facts from which it could be ascertained upon what basis the Plaintiffs are claiming the reliefs as prayed for in the suit.

5. Therefore, in order to decide the cause of action, this Bench is to consider the facts as narrated in the instant suit. It appears from the copies of the plaint of the earlier suit and that of the instant suit that the two suits are based on the selfsame set of facts meaning thereby the later suit has also been instituted by the Plaintiffs over the selfsame cause of action over which he filed the earlier suit. Since, the earlier suit was dismissed on the above-mentioned date, I am of the view that in view of the provisions of Order 9 Rule 9 of the C.P.C., the present suit is not maintainable at all. The learned Trial Judge has failed to appreciate this aspect of the matter in dispute between the parties.

6. Accordingly, the impugned order cannot be supported. The learned Trial Judge has committed errors of law in rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure

7. Accordingly, the revisional application is allowed. The impugned order is hereby set aside. The application under Order 7 Rule 11 of the CPC filed by the Defendants/Petitioners stands allowed meaning thereby the plaint is rejected.

8. Considering the circumstances, there will be no order as to costs.

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