

Ajit Nain Vs. Bengal Silver Spring Projects Ltd. and Anr.

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Court : Kolkata

Decided On : Mar-15-2017

Judge : Shivakant Prasad

Appellant : Ajit Nain

Respondent : Bengal Silver Spring Projects Ltd. and Anr.

Judgement :

IN THE HIGH COURT AT CALCUTTA ORDINARY ORIGINAL CIVIL JURISDICTION ORIGINAL SIDE Present: The Honble Justice Shivakant Prasad CS70of 2007 GA1619of 2007 GA3797of 2007 GA4036of 2008 GA1513of 2014 GA2911of 2016 GA3403of 2016 Ajit Nain Versus Bengal Silver Spring Projects LTD.& Anr.

For the Plaintiff : Mr.P.C.Sen, Sr.Adv.Mr.Arindam Mukherjee, Adv.Mr.Joydeb Ghorai, Adv.Mr.Dilip Kr.

Ghosh, Adv.Mr.Saugata Benerjee, Adv.For the Defendant No.1 : Mr.Swarendu Ghosh, Adv.Mr.Arik Banerjee, Adv.For the Defendant No.3 : Mr.Pramit Kr.

Roy, Sr.Adv.Ms.Saheli Sen, Adv.Heard on : 21.02.2017 C.A.V.on : 21.02.2017 Judgment on : 15.03.2017 GA1513of 2014 Defendant No.1 has prayed for rejection of the plaint filed in CS No.70 of 2007 under the provision of Order 7 Rule 11(d) of Code of Civil Procedure, 1908 and dismissal of the suit with exemplary costs.

According to the defendant No.1/petitioner averment in paragraph 12 of the amended plaint reveals that the subject matter of the suit is immovable property admeasuring 3000 sq.

ft.

at Eastern Metropolitan Bye pass at Silver Springs, No.5, JBS, Halden Avenue, Kolkata-700 105 (hereinafter referred to as suit property) situated outside the territorial jurisdiction of this Honble Court and the suit being the suit for land, this Court is devoid of jurisdiction to try the same.

The plaintiff/objector has contested the said application by written objection-on-affidavit contending inter alia, that upon representation made by Sr.Piyush Bhagat, the Managing Director, person in control of management of the defendant No.1 having ostensible authority to enter into an agreement on behalf of the said defendant No.1, the plaintiff parted with money and had entered into an agreement with the said defendant No.1 in February, 2003 for purchase of a space measuring about 3000 sq.

ft.

in the commercial block on the ground floor at the suit premises.

The breach on the part of the defendant No.1 in refusing to perform the said agreement as recorded in the letter dated 12th February, 2007 was issued from No.5/1A, Hungerford Street, Kolkata-700 017 and received by the plaintiff at No.44, Ezra Street, Kolkata-700 001 within jurisdiction of this Court.

Mr.P.C.Sen, learned Senior Advocate for the plaintiff further submitted that the title to or interest in the property agreed to be sold by the defendant No.1 is not the issue to be decided in this suit as no enquiry as to the title or possession or right to immovable property is required to be made in the suit, by reason of the prayer (c1) of the amended plaint as against the defendant No.3.

It is submitted that six Cheque aggregating 20,00,000/was handed over by the plaintiff on 3rd July, 2000 under the agreement and the same was encashed by

the defendant No.1 and that the plaintiffs agreement with the defendant No.1 is prior to the agreement with the defendant No.3.

Accordingly, the application under Order 7, Rule 11 of CPC be rejected.

GA2911of 2016 This application has been submitted on behalf of the defendant No.3 contending that the claim of the plaintiff as made in the amended plaint relates to the title and delivery of the possession of immovable property situated outside the ordinary original civil jurisdiction of this Honble High Court as the plaintiff has prayed for execution and registration of a deed of conveyance against the defendant No.1 in respect of the suit property consequently upon execution and cause registration of necessary conveyance for transfer of the defendant No.3 right title interest in the suit property.

As such, this Court has to decide the total of the land under whom the said area is in possession, who is the owner and who has the authority to execute the deed of conveyance in favour of the plaintiff if at all under the law.

Mr.Pramit Kr.

Roy, learned Senior Advocate for the defendant No.3 has submitted that the plaintiff has no oral or any subsisting agreement between the defendant No.1 prior to the deed of sublease in favour of the defendant No.3.

Since it is a suit for land and this Court does not have any jurisdiction to try the instant suit, any decree passed in the suit will be a nullity and not binding upon any party.

Thus, it is urged that the suit being C.S.70/2007 be taken off the file and be dismissed with exemplary costs.

GA3403of 2016 By this application the defendant No.3 has contended that it was added as party in the suit by an order dated 28th August, 2007 in TA No.448 of 2007 without giving an opportunity to file an affidavit.

Mr.Roy has submitted that right title and interest in the suit property of its stranger to the contract is beyond the scope of suit for specific performance of the contract

for sale and by reason of the defendant No.3 being a party or stranger to the contract and having been added as a party, the plaintiff has converted his suit for specific performance into a title suit and contended that from the map annexed to the said application it would appear that the defendant No.3 is having its business from a space measuring 4642 sq.

ft.

in the commercial complex known as Silver Arcade at premises No.5, JBS Halen Avenue, Kolkata-700 105 known as Silver Spring, ergo, the defendant No.3 has prayed that the name of the defendant No.3 be struck off from the array of defendants in CS No.70/2007 and for recall of the order dated 28th August, 2007 passed in 04.04.2007.

Now, it would be profitable to reproduce the provision of Order 7, Rule 11 of the CPC which provides for rejection of plaint and reads thus: 11.

Rejection of plaint.- The plaint shall be rejected in the following cases:- (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; (e) where it is not filed in duplicate; (f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers.as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff. Mr.Swarendu Ghosh, learned Advocate for the defendant No.1 concurring with the said submission of Mr.Roy submitted that averments made in paragraphs 11, 12,

14, 17, 19, 22 and 42 and prayer (c1) to the amended plaint makes the suit, a suit for land and invited my attention to the prayers made in the amended plaint which are reproduced hereunder: a.

Decree of specific performance of the agreement as pleaded in paragraph 12 above by directing the defendant No.1.

(i) Execution and registration of deed of conveyance in respect of the subject portion, i.e.3000 sq.

ft.

in the commercial building on the ground floor overlooking Eastern Metropolitan Bye-pass at Silver Springs, No.5, J.B.S., Halden Avenue, Kolkata-700105 in favour of the plaintiff against payment of balance consideration of Rs.14 lacs.

(ii) If the defendant No.1 fails to specifically perform the said agreement, the Registrar, Original Side, be directed to specifically perform the said agreement in the manner aforesaid; (iii) Perpetual injunction restraining the defendant No.1 from acting in breach of and/or in derogation of or in any manner inconsistent with the agreement as pleaded in paragraph 12 above; (c1) Mandatory Injunction directing the defendant No.3 to forthwith execute and caused to be registered in favour of the plaintiff necessary conveyance for transfer of the defendant No.3s right, title and interest in the said area morefully described in paragraph 12 above.

(iv) Receiver; (v) Injunction; (vi) Costs; (vii) Further or the other relief; It is also submitted that the plaintiff has not even taken any leave under Clause 12 of the Letters Patent of Calcutta High Court, which reads as under- Original jurisdiction as to suits.- And we do further ordain, that the said High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been fiRs.obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the

Defendant at the time of commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed One hundred rupees. Thus, it is clear from the aforesaid rule that this Court in exercise of its ordinary original civil jurisdiction will have power to receive, try and determine: (1) suits for land or other immovable property if such property is situated within the local limit of original jurisdiction of the High Court; or (2) all other cases (a) if the cause of action has arisen wholly within the local limits of the ordinary original jurisdiction of the High Court; (b) if prior leave of the court has been obtained and the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the High Court; or (c) if the defendant dwells or carries on business or personally works for gain within such limits.

Therefore, the moot issue as to whether the present suit is a suit for land has to be determined on the averments made in the plaint with reference to the reliefs claimed therein.

It is a settled principle of law that where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a suit for land. Per contra, Mr.P.C.Sen, learned Senior Advocate assisted by Mr.Arindam Mukherjee for the plaintiff fortifies his argument with the submission that so far as the contention that the suit appears to be barred by any law under the provisions or Order 7 Rule 11(d) is concerned it has to be found from the averments made in the plaint itself and that adjudication of right title and interest in respect of the immovable property situated outside the jurisdiction of this Honble Court is concerned, it would appear from a meaningful reading of the plaint that no such issue will arise to grant the reliefs claimed in the suit.

A suit for specific performance has been considered to be somewhat in the nature of a preliminary decree which cannot set out in fullest details of the different steps which are required to be taken to implement the main portions of the order directing specific performance of the contract as the plaintiff has originally sought

for specific performance against the defendant No.1.

The possession of the suit property was not asked for.

When the defendant No.1 revealed that the suit property has been transferred to the defendant No.3 prior to institution of the suit the plaintiff impleaded the defendant No.3 a party and amendment of the plaint.

Since the defendant No.1 had made over possession of the suit property to the defendant No.3, possession has been claimed which does not affect the title to the property in question.

The contract between the plaintiff and the defendant No.1 is enforceable against the defendant No.3 and the defendant No.3 is also bound by the decree for specific performance that may be passed against the defendant No.1 in view of the provisions of Section 19(b) of the Specific Relief Act, 1963.

The defendant No.3 will have to either join the conveyance to perfect the title of the plaintiff or the decree will be enforced as if there exists no conveyance between the defendant No.1 and the defendant No.3 with regard to the suit property.

In this regard the plaintiff relied on the following decisions: 1.

AIR1960 Cal.

626 (Debendra Nath Chowdhury versus Southern Bank Ltd.) (Division Bench) 2.

AIR 1982 SC818(Babulal versus M/S.Hazari Lal Kishori Lal & Ors.) 3.

2001(7) SCC698(AdCo.Electronics PVT.LTD.versus Daulat & Anr.) It is further submitted that the defendant No.2 is also from Kolkata.

All the evidences are lying at or within the jurisdiction of this Honble Court.

The Honble Court will be a forum of convenience for all the parties and is also better equipped to decide the issues involved in the suit than the District Courts wherein the suit has to be tried if it is held that the suit is a suit for land.

The defendant Nos.1 and 3 having participated in the hearing of the said applications has not only acquiesced in the steps taken by the plaintiff to carry forward the progress of the suit incurring considerable expenses but have also made use of the existence of the suit to obtain such interlocutory relief as they thought would be to their advantage at the hands of the court which the said defendants now claim should not try the suit.

In this regard the plaintiff relied on the judgment reported in AIR 1953 SC472(Chittaranjan Mukherji versus Barhoo Mahto).In the instant suit, the property though situated outside the original jurisdiction of this Court, as per Clause 12 of the Letters Patent, 1865, this Honble Court may not have the territorial jurisdiction to try the said suit yet the suit being a suit for specific performance of contract for sale, this Court has the jurisdiction to try the suit inasmuch as cause of action arose within the jurisdiction of this Court as the agreement was entered by and between the parties with the handing of the six Cheques amounting to Rs.20,00,000/- to the defendant No.1 towards the earnest consideration money for purchase of the suit property.

On the contrary, Mr.Ghosh, learned Advocate for the defendant No.1 and Mr.Pramit Kr.

Roy, Sr.Advocate for the defendant No.3 have submitted that by reason of amendment of plaint and prayer c1 to the plaint for a decree against the defendant No.3, the suit has taken shape of a suit in the nature of suit for land as the instant suit is not a suit simpliciter for specific performance of contract for sale in terms of a validly executed agreement for sale and also relied on the authority in AdCo.Electronic PVT.LTD.versus Daulat and Another reported in (2001) 7 Supreme Court Cases 698, in which case the Honble Apex Court referring to the decision in His Highness Shrimant Maharaj Yashvantrav Holkar of Indore v.

Dadabhai Cursetji Ashburner reported in ILR (1890) 14 Bom.

354 and Moolji Jaitha and Co.v.Khandesh Spg.

and Wvg.

Mills Co.LTD.reported in AIR 1950 FC83was of the view that a suit for land is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property.

Whether a suit is a suit for land or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a suit for land.

The said observation was arrived at in the cited decision in respectful agreement with the view expressed by Mahajan, J.

in Moolji Jaitha case (supra) wherein it has been observed thus: If an attempt is made to find a comprehensive definition of the phrase, it will eventually be discovered that it has cre

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