

Dilip Bhattacharya and ors. Vs. Ratan Kumar Sen and ors.

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Court : Kolkata Appellate

Decided On : Dec-03-2010

Judge : Jyotirmay Bhattacharya , J.

Appeal No. : C.O. No. 1100 of 2010 With C.O. No. 3755 of 2007

Appellant : Dilip Bhattacharya and ors.

Respondent : Ratan Kumar Sen and ors.

Advocate for Def. : Mr. S.P Roy Choudhury; Mr. Jiban Ratan Chatterjee; Mr. Biswanath Mitra; Mr. Dipak Kumar Mukherjee; Mr. Sukhodeep Mukherjee; Mr. Deb Kumar Chandra, ADvs

Advocate for Pet/Ap. : Mr. Haradhan Banerjee; Mr. D. P. Mukherjee; Mr. P. Bhattacharjee; Mr. Debjit Mukherjee Mr. P. Ganguly, Advs

Judgement :

1. Two revisional applications have been filed by the defendants/petitioners for challenging two orders passed by the Learned Trial Judge in the plaintiffs suit for declaration of his tenancy right, recovery of possession and damages and 2 also for permanent injunction. By an order dated 20th September, 2006, the defendants application for rejection of plaint under Order 7 Rule 11 of the Civil Procedure Code was rejected on contest. The said order is the subject matter of challenge in civil revisional application being C.O. No. 3755 of 2007.

2. By subsequent order dated 23-02-2010, the plaintiffs application for amendment of plaint was allowed by the Learned Trial Judge. The said order is under challenge in Civil Revisional application being C.O. No. 1100 of 2010. Since both the applications are, to some extent, related to each other, both the applications are taken up for hearing together.

Re: C.O. No. 1100 of 2010

3. Though subsequent to the dismissal of the defendants application under Order 7 Rule 11 of the Civil Procedure Code, the plaint was amended at the instance of the plaintiffs for introducing a challenge with regard to validity and legality of an earlier agreement between the parties which formed part of a compromise decree passed in an earlier suit between the same parties concerning the rival claims of the parties with regard to the self same suit property but since Mr. Roy Choudhury, learned Senior Counsel, appearing for the plaintiffs/opposite parties, submits before this Court that his client now wants to abandon his application for amendment of plaint, the impugned order by which the plaintiffs application for amendment of plaint was allowed by the Learned Trial Judge, is taken out of the record and thus the amendment which was allowed will remain ineffective. As such the original plaint as it stood prior to 3 such amendment will stand in the filed and this Court is thus required to consider the defendants application for rejection of the plaint on the basis of the plaintiffs pleading in the original plaint.

5. Thus this Court holds that the revisional application being C.O. No. 1100 of 2010 which is directed against the order allowing amendment passed by the Learned Trial Judge, has now become infructuous and the same is disposed of accordingly.

Re: C.O. No. 3755 of 2007

6. Let me now consider the merit of the other revisional application being C.O. No. 3577 of 2007 in the context of the above discussion.

7. Since it is settled law that while considering the defendants application under Order 7 Rule 11 of the Code of Civil Procedure, the Court cannot consider any

other statement save and except the pleadings made out by the plaintiffs in the plaint for ascertaining attraction of the provisions of Order 7 Rule 11 of the Civil Procedure Code, this Court will restrict its consideration with regard to the plaint pleadings only.

8. Let me give a short background of this case for proper appreciation of the dispute involved in this revisional application.

9. The plaintiff filed the said suit on the basis of the following cause of action;-

10. Initially, Sen Babus namely opposite parties nos. 4 to 7 filed a suit for ejectment against the plaintiff namely Sudip Kumer Kanjilal for recovering khas possession from their tenant viz. the said Kanjilal. The said suit was dismissed ex parte. Sen Babus challenged the said decree in appeal being Title Appeal No. 102 of 1995 before the Appeal Court.

11. During the pendency of the said appeal, Sen Babus entered into a development agreement with Sasanka Chatterjee, namely the defendant no.5 of the present suit, for developing the suit property.

12. The said Kanjilal Babu, namely the plaintiff in the present suit earlier filed a suit being T.S. No. 396 of 1997 for declaration of his tenancy right in respect of the suit property and for injunction for restraining the Sen Babus from disturbing his possession from the suit property.

13. During the pendency of the said suit, a tripartite agreement was entered into between Sen Babu, Chatterjee Babu and Kanjilal Babu so that the development agreement can be implemented properly by protecting the right of the plaintiff viz. Kanjilal Babu by way of adjustment of their rights in the property. It was agreed between the parties that Kanjilal Babu would deliver possession of his tenancy to the parties of the other part of the said agreement and thereafter the developer will demolish the entire building and will construct a new building within six to nine months from the date of delivery of such possession by Kanjilal Babu. It was further agreed that notwithstanding delivery of such possession of the said tenancy by the plaintiff, the tenancy of the said plaintiff will continue so long as

another specified portion in a different side of the newly built up building is not given to the said plaintiff on ownership basis. Both the aforesaid suit which was filed by Kanjilal Babu as well as the Title Appeal filed by the Sen Babus were disposed of on the basis of the said tripartite agreement which formed part of the decree passed in the said earlier suit filed by Kanjilal Babu.

14. Pursuant to the said agreement, the plaintiff delivered his possession of his tenancy. But neither the Sen Babus nor Chatterjee Babu fulfilled their part of the said contract though the time stipulated for completion of the said development work has long expired.

15. Subsequently, the suit property was transferred by Sen Babus in favour of Bhattacharjee Babus namely the defendant nos. 1, 2 and 3 who also demanded rent from the plaintiff viz. Kanjilal Babu by way of attornment of the plaintiffs tenancy.

16. The plaintiffs claimed that even after delivery of possession of his tenancy, the plaintiff continued to deposit rent in favour of his landlord in the office of the rent controller. But since the defendants have failed to comply with their terms of the said tripartite contract resulting incurrance of loss in the plaintiffs business, the plaintiffs filed the instant suit by seeking the aforesaid reliefs.

17. Apart from the pleadings as aforesaid the legality of the said tripartite agreement was challenged in paragraph 19 of the plaint on the ground that since the said agreement was procured from the plaintiff by misrepresentation and coercion the said agreement was ilegal . Though such statements were made for challenging the legality of such tripartite agreement in one of such paragraphs of the plaint but in fact no relief was claimed for avoiding the said agreement in the plaint.

18. The defendant was practically inspired by this part of the pleadings of the plaintiff and prayed for rejection of the plaint on the ground of non-disclosure of the cause of action of the suit.

19. Mr. Banerjee, learned Advocate, appearing for the petitioner was very candid in his submission. He submitted that the plaintiffs earlier suit being T.S. No. 396 of 1997 was disposed of on compromise on the basis of the aforesaid tripartite agreement which formed part of the said decree. He thus submitted that when the validity of the said agreement has been challenged in the suit, it can safely be presumed that the legality of the decree passed in the earlier suit is also under challenge as the said agreement formed part of the decree. He further contended that once it is found that the said compromise decree in substance is under challenge in the present suit then the present suit should be declared as barred under Order 23 Rule 3A of the Civil Procedure Code.

20. Mr. Banerjee further contended that since in the earlier suit the plaintiffs prayer for declaration of his tenancy right and permanent injunction was not granted, identical reliefs by way of declaration of his tenancy rights and injunction cannot be granted. Furthermore, if the principal relief by way of declaration cannot be granted, the incidental relief for recovery of possession also cannot be granted in the present suit. Mr. Banerjee thus prayed for the rejection of the plaint on the ground of bar of law in maintaining the suit under Order 7 Rule 11 of the Civil Procedure Code.

21. Mr. Roy Choudhury, learned Senior Counsel, appearing for the opposite parties, refuted such submission of Mr. Banerjee by submitting that his client never prayed for any relief to avoid the said tripartite agreement in the suit. He contended that if the plaint as a whole, is read then it will be absolutely clear that in fact the said suit was filed for enforcement of the terms of the said tripartite agreement as per the decree passed in the earlier suit. He further contended that the statements made by his client in paragraph 19 of the plaint is a mismatch with the rest part of the pleadings in the plaint. He also contended that the statements made in paragraph 19 of the plaint cannot fit in the cause of action of the said suit and as such no relief was claimed in this regard in the said suit. He also submitted that if this Court so desires, this Court can even expunge those unnecessary pleadings made in paragraph 19 of the plaint from the records by invoking its jurisdiction under Order 6 Rule 16 of the Civil Procedure Code.

22. Mr. Roy Choudhury, further contended that since the reliefs which were claimed in the present suit is based on a different cause of action made out in the present plaint, the Court cannot refuse to grant the said relief as similar relief claimed in a different context was not granted in the earlier suit.

23. Mr. Roy Choudhury thus submitted that this revisional application deserves no merit for consideration. He thus prayed for the dismissal of the defendants application under Order 7 Rule 11 of the Civil Procedure Code. Having considered the respective submissions of the learned Counsel of the respective parties, this Court finds much substance in the submission of Mr. Roy Choudhury as by reading the plaint pleadings as a whole, this Court finds that the plaintiff, in fact, filed the said suit to enforce the terms of the tripartite agreement which is a part of the decree passed in earlier suit between the same parties. Though this Court finds that certain statements were made for challenging the legality of the said tripartite agreement faintly but in fact no relief was claimed by the plaintiff to avoid the said agreement.

24. This Court agrees with the submission of Mr. Roy Choudhury that the statements made by the plaintiff in paragraph 19 of the plaint, challenging the legality of said tripartite agreement is a mismatch in the context of the cause of action pleaded in the plaint. However, instead of expunging this part of the pleadings from the plaint at this stage, this Court leaves the said matter to the discretion of the Learned Trial Judge.

25. This Court also finds that the cause of action for the present suit is not identical with the cause of action of the earlier suit and even it is found that certain reliefs were not granted in the earlier suit on certain set of facts, it cannot be said that identical reliefs on different cause of action cannot be granted in the same suit.

26. Thus this Court holds that the plaint cannot be rejected either on the ground of non-disclosure of the cause of action or on the ground of bar of law in maintaining the suit, as claimed by the petitioner in this proceeding. Thus this Court holds that this revisional application has no merit. The revisional application thus stands rejected.

27. Both the aforesaid revisional applications are thus disposed of.

28. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

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