
(2016) 08 CAL CK 0074
In the Calcutta High Court
Case No : C.O. No. 3448 of 2008

Bharat Overseas Pvt. Ltd.

APPELLANT

Vs

Suchittra Properties (Pvt.) Ltd.

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2017) 2 ICC 231 : (2017) 1 WBLR 204

Hon'ble Judges : Mr. Ashis Kumar Chakraborty, J.

Bench : Single Bench

Advocate : Mr. Amritam Mondal and Mr. Bhaskar Mukherjee, Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

Ashis Kumar Chakraborty, J. - This revisional application, at the instance of the proforma defendant Nos. 26 and 27 petitioners is directed against the orders dated July 08, 2008 and July 14, 2008 passed by the learned Civil Judge (Senior Division) at Sealdah in Title Suit No. 3 of 2006 (originally numbered as T.S. No. 138 of 2005).

2. The facts of the case giving rise to this revisional application lay in a very narrow compass and they may be briefly set out as follows.

The plaintiff opposite no. 1 filed the Title Suit No. 3 of 2006 (hereinafter referred to as "the said suit") claiming, inter alia, decree for specific performance of contract of sale dated May 5, 2005 in respect of the suit property situate at Premises Nos, 3 and 4 Mahendra Roy Lane, P.S. Topsia, District- South 24 Parganas, (hereinafter referred to as "the suit property") against the defendant Nos. 1 to 25, a decree for confirmation of its possession of the suit property and a decree directing the defendant Nos. 1 to 25 to execute and register the deed of conveyance/sale in respect of the suit property. In the said suit, the petitioners in this revisional application are impleaded as the proforma defendant Nos. 26 and

27 and no relief has been claimed against them. The petitioners, as the proforma defendants in the said suit, filed an application under Order 7, Rule 11 of the Code of Civil Procedure (in short "the Code") before the learned Court below, praying for rejection of the plaint filed in the said suit. In the said application, the petitioners urged that they are the owners of the suit property, the plaintiff opposite party no. 1 had earlier filed similar suit, being T.S. No. 272 of 2005 against the same defendants claiming, inter alia, a declaration that the agreement for sale dated May 05, 2005 in respect of the same suit property is binding upon the same defendant Nos. 1 to 25 and the same was pending before the learned Civil Judge (Junior Division) at Sealdah. The opposite party nos. 2 to 26 in this application are the defendant Nos. 1 to 25 in the said suit as also in the said T.S. No. 272 of 2005 and the petitioners in this revisional application are the proforma defendant Nos. 26 and 27 in both the suits. While the said application of the petitioners under Order 7, Rule 11 of the Code was pending, the plaintiff opposite no. 1 filed an application under Order 6, Rule 17 of the Code for amendment of the plaint filed in the said suit and by an order dated March 29, 2006 the learned Court below allowed the said application of the plaintiff opposite party no. 1. The petitioners challenged the said order of the learned Court below by filing a revisional application before this Court and the same was also rejected by this Court. Thereafter, the plaintiff opposite party no. 1 amended the plaint filed in the said suit and served a copy of the same on all the defendants, including the petitioners. On August 22, 2007, the plaintiff opposite party no. 1 filed the second application under Order 6, Rule 17 of the Code, praying for amendment of the plaint filed in the said suit by incorporating the relief for damages against the defendant nos. 1 to 25.

3. On July 08, 2008 the petitioners, as the proforma defendants in the said suit filed an application before the learned Court below praying for, that before considering the second amendment application filed by the plaintiff, their pending application under Order 7, Rule 11 of the Code should be decided first. The learned Court below, however, did not pass any interim order in the said application and fixed the next date for hearing of all the application on July 14, 2008. On July 14, 2008 the petitioners refused to make any submission to oppose the amendment application of the plaintiff opposite party and insisted that their application under Order 7, Rule 11 of the Code be disposed of first. However, by an order dated July 08, 2008, the learned Court below allowed the second amendment application of the plaintiff opposite party no.1. As recorded above, in this revisional application the proforma defendants petitioners have assailed both the said order dated July 08, 2008 and July 14, 2008 passed by the learned Court below.

4. Mr. Amritam Mondal, learned advocate appearing for the petitioners contended that when the plaintiff opposite party no. 1 had already filed in Title Suit No. 272 of 2005 before the learned Civil Judge (Junior Division), Sealdah against the opposite party nos. 2 to 26 in respect of the same suit property without obtaining leave under Order 2, Rule 2 of the Code, on the self-same cause of action the

second suit filed by the plaintiff opposite party no. 1 was barred by law and the learned Court below lacked the jurisdiction to entertain the second suit filed by the plaintiff opposite party no. 1. He further submitted that in the present case when the learned Court below lacked the jurisdiction to entertain the second suit, it committed an error of law in allowing the second amendment application filed by the plaintiff opposite party no. 1 without first deciding the application filed by the petitioners under Order 7, Rule 11 of the Code. In support of such contention, Mr. Mondal relied on the Division Bench decision of this Court in the case of Zohra Khatoon v. Mohd. Janealam reported in AIR 1978 Cal 133 and the Single Bench decision of this Court in the case of Ratan Chand Khanna v. Mahendra Kumar reported in AIR 1979 Cal 55. No other ground was urged on behalf of the petitioners to challenge the impugned order dated July 14, 2008 passed by the learned Court below allowing the amendment application of the plaintiff opposite party.

5. None appeared for the plaintiff opposite parties to contest this application.

6. I have considered the materials on record and the submission of Mr. Mondal appearing for the petitioners. In the case of Zohra Khatoon (supra) the Division Bench of this Court held that when a Court lacks the inherent jurisdiction to entertain a suit, it cannot make any order for amendment of the plaint to bring the suit within its jurisdiction. In the case of Ratan Chand Khanna (supra), since this Court lacked inherent jurisdiction to entertain the suit, following the decision of the Division Bench in the case of Zohra Khatoon a learned Single Judge rejected the application the plaintiff to amend his plaint.

7. In this application, the petitioners have disclosed a copy of the plaint filed by the plaintiff opposite party no. 1 in the said suit, a copy of their application under Order 7, Rule 11 of the Code, as well as the copy of the amendment application of the plaintiff opposite party no. 1 which has been allowed by the learned Court below by the impugned order dated July 14, 2008. It is well settled principle of law that for the purpose of deciding an application under Order 7, Rule 11 of the Code, the averments contained in the plaint should be treated as true and correct and the plaint should be read as a whole. From a fair reading of the plaint filed in the said suit it cannot be said that the learned Court below lacks the inherent jurisdiction to entertain the said suit, either on the ground of lack of territorial jurisdiction or on the ground of subject matter of the suit and, as such, the said decisions of this Court in the cases of Zohra Khatoon (supra) and Ratan Chand Khanna (supra) relied upon by the petitioners have no application in this case. Consequently, the impugned order dated July 14, 2008 passed by the learned Court below allowing the plaintiff opposite party no. 1 to amend the plaint filed in the said suit, as recorded above cannot be held to be without jurisdiction or vitiated by any error of law. Even the order dated July 08, 2008 passed by the learned Court below does not suffer from any illegality.

8. For all the foregoing reasons, I do not find any merit of the present revisional application and the same stands rejected. The interim orders passed in the

revisional application also stands vacated.

9. It is, however, made clear that this Court has not otherwise gone into the merit of the application filed by the proforma defendants petitioners before the learned Court below under Order 7, Rule 11 of the Code and the learned Court below shall decide the said application on merit.

10. With the above directions, the revisional application, being C.O. No. 3448 of 2008 stands disposed of.

11. However, there shall be no order as to costs.

12. The learned Registrar (Administration) is requested to communicate to operative portion of this judgment to the learned Court below.

13. Let urgent certified copy of this judgment, if applied for, be made available to the petitioners upon compliance with all requisite formalities.