

(2011) 11 CAL CK 0010
In the Calcutta High Court
Case No : C.O. No. 1320 of 2011

Prabhat Ch. Karmakar and Others

APPELLANT

Vs

Sri Rabin Karmakar @ Rabin Chandra Karmakar

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10A, 21, 96

Citation : (2011) 11 CAL CK 0010

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : A.B. Rout and Mr. A.K. Chowdhury, for the Appellant; Asish Ch. Bagchi, Amitabha Roy and Mr. Hirak Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the plaintiffs and is directed against the judgment and decree dated January 12, 2011 passed by the learned Additional Civil Judge (Junior Division), Sealdah in Ejectment Case No.426 of 2004 thereby dismissing the case on contest.

2. The short fact is that the plaintiffs instituted a case being Ejectment Case No.426 of 2004 against the opposite party praying for a decree for recovery khas possession and other reliefs in respect of the premises in case before the learned Civil Judge (Junior Division), Sealdah. The defendant / opposite party herein is contesting the said case by taking his defence stand and controverting the material allegations raised in the case. Upon recording evidence on behalf of both the sides, the learned Trial Judge dismissed the said ejectment case with costs on contest. Being aggrieved, this application has been preferred.

3. Upon hearing the learned advocates of both the sides and on perusal of the materials on record, I find that the learned Trial Judge framed as many as six issues and out of them the first issue is as to the maintainability of the case. He has decided this issue against the plaintiffs. He has also decided the other issues.

4. Under the circumstances, Mr. Rout appearing on behalf of the petitioners submits that since the issue no.1 has been decided against the plaintiffs holding that the trial court lacks the jurisdiction, he (trial court) should not have decided the other issues and he should have taken recourse to Order 7 Rule 10 A of the C.P.C. Instead of doing that the learned Trial Judge has discussed all the issues and dismissed the case accordingly. The judgment and decree passed by the learned Trial Judge is not, therefore, sustainable and so, the learned Trial Judge has committed wrong in passing the impugned judgment and order. Accordingly, he prays for setting aside the impugned judgment and order and also prays for giving directions upon the Trial Court for taking steps under Order 7 Rule 10A of the C.P.C.

5. Mr. Rout also submits that even in an application for revision, this Hon'ble Court is quite competent for passing appropriate orders after setting aside the decree for filing the said case for ejectment before the appropriate Forum as per Explanation to Order 7 Rule 10 of the C.P.C.

6. In support of his contention, Mr. Rout has relied upon the decisions of R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., and Gulab & ors. v. Jagga Ram Singh & ors. reported in AIR 1983 All 145 and thus, he submits that the learned Trial Judge ought not to have dismissed the case but to pass orders for return the plaint for presentation to the proper forum.

7. On the other hand, Mr. Asish Ch. Bagchi, learned Advocate appearing for the opposite party, by referring the decision of Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, and the decision of Ramsarup Dass and Others Vs. Pyare Das and Another, has submitted that this revisional application is not maintainable because an appeal lies against the judgment and decree passed by the learned Trial Judge in an eviction proceeding.

8. Referring to the decision of Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat, he submits that the right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. There is a greater scope in the appeal. Accordingly, this revisional application is not maintainable and so, the revisional application should be dismissed.

9. Mr. Rout has stressed much on the decision of R.S.D.V. Finance Co. Pvt. Ltd. (supra) and has submitted that as soon as the suit is hit on jurisdiction point, the trial Judge should not have dismissed the suit but should have returned the plaint for presentation to proper court and the steps should have taken at early as per Section 21 of the C.P.C. In the instant case, no issue on jurisdiction point has been framed. While deciding the question of maintainability of the case, the learned Trial Judge decided the jurisdiction point. The written objection lays down the question of maintainability in general terms. Therefore, the conditions laid down in Section 21 of the C.P.C. have not been fulfilled. So, I am of the view that the decisions referred to by Mr. Rout will not be applicable in the instant

situation. It is the finding of the court that the Trial Court keeps the jurisdiction in deciding the question of maintainability of the case. Be that as it may, the impugned judgment and order is appealable and not revisable.

10. Having considered the submissions of both the sides and on perusal of the materials on record, in the instant case, I find that after framing of issues, parties have adduced evidence and the learned lawyers have argued over the case. Upon taking of such recourses, the learned Trial Judge has dismissed the case after discussing on all issues framed by him. The issue no.1 was not decided in the isolated form at the first instance. It may be mentioned herein that the defendant filed a revision being C.O. No.536 of 2009 which was disposed of on May 19, 2009 upholding the finding of the learned Trial Judge that the issue of maintainability of the case shall be decided at the time of trial along with other issues. So, the learned Trial Judge has decided all the issues in the case.

11. Under the circumstances, I hold that the proper remedy of the petitioner is to prefer an appeal against the impugned judgment and decree u/s 96 of the C.P.C. and not a revision.

12. Mr. Rout has contended that as soon as the issue no.1 relating to jurisdiction has been decided against the plaintiffs the learned Trial Judge ought not to have taken up the other issues for decision, but such a course was not followed. He has also submitted that even in a case of revision, this Court is quite competent to send the matter to the concerned authority having jurisdiction to deal with the matter.

13. With due respect to Mr. Rout, I am of the view that since no preliminary hearing relating to jurisdiction as provided in Section 21 of the C.P.C. has been followed in the instant case and the learned Court below has proceeded with the merit of the matter as a whole along with the issue of maintainability, at present, there is no scope of thinking the Section 21 of the C.P.C. in an isolated form. Since, the suit has been dismissed on merits, the decisions referred by Mr. Rout, I hold, would not be applicable in the situation. The two decisions referred to by Mr. Rout relate to appeal and not revision at all. The plaintiffs / petitioners herein have no other alternative but to prefer an appeal before the appropriate Forum and in that case, he may seek for appropriate relief under Order 7 Rule 10 of the C.P.C. and the learned Appellate Court may pass appropriate orders therein. There is a greater scope in passing such orders in the Appellate Court because appeal is treated as a continuation of the suit.

14. Accordingly, I am of the view that this revisional application is not maintainable against the judgment and decree passed by the learned Trial Judge.

15. This revisional application fails to succeed. Accordingly, the revisional application is dismissed.

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

17. Urgent xerox certified copy of this order, if applied for, be supplied to the

learned Advocates for the parties on their usual undertaking.