

(2011) 04 CAL CK 0007
In the Calcutta High Court
Case No : C.O. No. 2372 of 2009

Probhat Basak and Others

APPELLANT

Vs

Rani Saha and Others

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Partition Act, 1893 — Section 4
West Bengal Land Reforms Act, 1955 — Section 8

Citation : (2011) 04 CAL CK 0007

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Tapabrata Chakraborty and Abhijit Basu, for the Appellant; None appears, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—Challenge is to the Order No. 61 dated March 2, 2009 passed by the learned Civil Judge (Junior Division), Kalna, Dist. Burdwan in Title Suit No. 258 of 1998 thereby rejecting an application under Order 7 Rule 11 of the CPC Court (henceforth shall be referred to as Code of Civil Procedure) filed by the Petitioners.

2. The short question involved in the suit is whether a suit for declaration of title, permanent injunction, preemption u/s 8 of the W.B.L.R. Act, 1956, a right of preemption u/s 4 of the Partition Act in a composite form is maintainable.

3. The Plaintiffs/opposite parties herein instituted a suit being Title Suit No. 258 of 1998 against the Petitioners praying for the aforesaid reliefs before the learned Civil Judge (Junior Division), Kalna in a single title suit. In that suit, the Petitioners entered appearance 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.

4. Upon hearing the learned Counsel for the Petitioners and on going through the materials on record, I find that in a single suit, the Plaintiffs have prayed for decree for declaration of title, permanent injunction, pre-emption u/s 8 of the W.B.L.R. Act, 1956 and also preemption u/s 4 of the Partition Act. The Plaintiffs/opposite parties contended that the Petitioners are the stranger purchasers. So, they have sought for the aforesaid reliefs in a single suit. If the Plaintiffs want to have pre-emption in respect of the transaction by which the stranger purchasers had purchased the land. They are to file an appropriate application within the time schedule u/s 8 of the W.B.L.R. Act before the learned Civil Judge (Junior Division) having the territorial jurisdiction. That application is to be converted into a misc. case under the said section of the Act. In the instant case, the Plaintiffs have also prayed for declaration of title and injunction against the so-called stranger purchasers. At the same time, the Plaintiffs have also prayed for pre-emption u/s 4 of the Partition Act. Exercise of such a right u/s 4 of the Partition Act is available when a suit for partition is filed and the stranger purchaser wants to have his separate allotment of share. It is not the case of the Plaintiffs that the so-called stranger purchasers have taken any steps for partition of their purchased land and separate possession of their purchased share out of the joint properties.

5. Mr. Chakraborty has referred to the decision of T. Arivandandam Vs. T.V. Satyapal and Another, and thus, he submits that when the plaint is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the Trial Court should exercise its power under Order 7 Rule 11 of the CPC Similarly, Mr. Chakraborty has also referred to the decision of Gautam Paul v. Debi Rani Paul and Ors. reported in AIR 2001 SC 61 and thus, he submits that unless the suit for partition is instituted by the stranger purchasers in respect of the dwelling house, the claim for preemption u/s 4 of Partition Act is not maintainable. From the admission of the Plaintiff in his plaint, I find that the Plaintiff himself has described that the suit property is classified as "suna" and "doba" and there is a godown. The suit property cannot, therefore, be termed as a dwelling house for the purpose of Section 4 of the Partition Act. Moreover, since the purchase the so-called stranger purchasers have not taken any steps for partition and separate allotment of their share. In such a situation, according to the decision of Gautam Paul (supra), the right of a family member to pre-empt the share purchased by the stranger is available when the stranger purchaser sues for partition only. So, unless there is initiation of a proceeding for partition by the stranger purchasers, the co-owners do not get a right to claim for pre-emption. These two decisions, I hold, are very much applicable in the instant case.

6. In view of the matter, I am of the view that the said suit suffers from multifariousness. So much reliefs cannot be clubbed together and they cannot be solved in a suit of this nature. Moreover, the pre-emption application u/s 8 of the W.B.L.R. Act is to be dealt with by institution of a misc. case. The nature and relief by an aggrieved party in respect of disposal of a proceeding u/s 8 of the

W.B.L.R. Act is quite different from the one in a suit for declaration, permanent injunction and for pre-emption u/s 4 of the Partition Act.

7. Therefore, I am of the view that the learned Trial Judge has failed to exercise the jurisdiction vested in him and he has committed errors of law in disposing the said application. Accordingly, the impugned order should be set aside.

8. The application is, therefore, allowed. The impugned is hereby set aside. The application under Order 7 Rule 11 of the CPC filed by the Petitioners before the learned Trial Judge stands allowed. The plaint filed by the Plaintiffs stands rejected.

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