

(2012) 07 CAL CK 0224
In the Calcutta High Court
Case No : C.O. No. 527 of 2007

Smt. Aruna Kar and Others

APPELLANT

Vs

Amarendra Nath Sanyal and Another

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 11

Citation : (2013) 2 CALLT 394 : (2012) 5 CHN 208

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Hiranmoy Bhattacharya, Mr. C.N. Sarkar and Mr. Tanmoy Mukherjee, for the Appellant; Joy Saha and Mr. Abhisek Seal, for the opposite party Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the defendants and is directed against the Order No. 49 dated December 4, 2006 passed by the learned Civil Judge (Senior Division), 4th Court, Alipore in Title Suit No. 7 of 2001 thereby rejecting an application under Order 7 Rule 11 of the C.P.C. The plaintiffs / opposite parties herein instituted a suit being Title Suit No. 7 of 2001 against the petitioners and the other opposite parties for specific performance of contract, injunction, damages and other reliefs before the learned Civil Judge (Senior Division), 4th Court, Alipore. According to the plaint case, two agreements for sale both dated July 29, 1999 were executed by the defendant Nos. 1 & 2 in favour of the plaintiffs in respect of the premises No. 1A, Mahendra Road, under P.S. Bhabanipur, Calcutta-700025. So, the said suit had been filed for the reliefs stated. The defendants are contesting the said suit by filing a written statement denying the material allegations raised in the plaint. They filed an application under Order 7 Rule 11 of the C.P.C. for rejection of the plaint and that application was rejected by the impugned order. Being aggrieved, the defendants have filed the said application.

2. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record including the supplementary affidavits filed by the parties, I find that the defendants have raised various grounds for rejection of the plaint. But the main matters for rejection of the plaint which should be under consideration in the instant application is whether the plaint discloses the cause of action to file the suit and whether from the statement made in the plaint, the suit is barred by any law.

4. So far as the ground of rejection of plaint on the point of cause of action is concerned, I find from the copy of the plaint that the plaintiffs have narrated several facts in support of the plaint case and ultimately, in paragraph No. 40 lays down that the causes of action are at first on July 29, 1999 when the agreement for sale had been executed and thereafter, on diverse dates and lastly on January 9, 2001 from an advertisement published in the Anandabazar Patrika at premises No. 1A, Mahendra Road, Calcutta-700025 within the jurisdiction of this learned Court. The question whether the agreement for specific performance of contract is enforceable or not or if the plaintiffs are entitled to get decrees on the basis of the two agreements dated July 29, 1999 are the matters of consideration at the time of trial of the suit. What I find, prima facie, from the materials on record that the plaint discloses the cause of action to file the suit and those are enough for the purpose of disposal of the application under Order 7 Rule 11 of the C.P.C. Therefore, it is, prima facie, held that the plaint discloses a cause of action to file the suit.

5. So far as the other ground as stated above, namely, whether the suit is barred by any other law, several grounds have been taken by the defendants and the learned Trial Judge opined that such grounds relating to maintainability of the suit touches the issue under Order 14 Rule 2 of the C.P.C. and the same matter involves a question of fact and law and so, unless and until, evidence is adduced on those matters, the same cannot be decided while disposing of the application under Order 7 Rule 11 of the C.P.C. In order to consider whether the suit is barred by any law, Court is to look into the plaint case only as made out in the suit and not on other papers particularly not the papers of the defendants filed in support of their contention.

6. An equitable mortgage with the U.B.I. was executed and while the property in question was under equitable mortgage, the said two agreements of sale dated July 29, 1999 were executed. As per materials on record, the defendant No. 4 paid up the dues of the bank. From the materials on record, I hold that the question whether the property in question is also a trust property, whether the defendant No. s 1 & 2 were entitled to execute the agreements for sale and if the defendants became owner under the circumstances are a mixed question of facts and law which could be decided only at the time of trial. Similarly, the question whether the agreements in question are loans in substance as contended by the defendants are to be decided only by taking evidence.

7. Mr. Hiranmoy Bhattacharya, learned Advocate appearing for the petitioners, has contended that the findings of the learned Trial Judge to the effect that the plaint cannot be rejected on the ground of maintainability being a mixed question of facts and law, cannot be upheld. "From the statement in the plaint, it appears that the suit is barred by law on various grounds as mentioned in the application appearing as Annexure - "B" at page No. 99 of the application," he has contended.

8. Just as noted above whether the aforesaid two agreements are, in fact, documents for a loan simplicitor and nothing else, I hold, could be decided only on taking evidence and not simply on the basis of the plaint case as made out in the plaint. Therefore, the contentions of the defendants that the plaintiffs should be non-suited on the basis of the plaint case cannot be accepted.

9. Mr. Joy Saha, learned Advocate appearing on behalf of the opposite party Nos 1 & 2, supporting the impugned order has rightly pointed out that a mixed question of facts and law has been raised by the defendants in order to raise the contention of rejection of the plaint and such contention cannot be decided on the basis of the plaint case only.

10. Having considered the materials on record and submissions of learned Advocates of both the sides relating to the ground of bar of the suit by any law, I hold that the ground cannot be decided without trial of the suit. The learned Trial Judge has rightly addressed the issue and rejected the application under Order 7 Rule 11 of the C.P.C. holding that this ground is to be decided only on the basis of evidence to be recorded on behalf of both the sides. The learned Trial Judge has also rightly held that the said application for rejection of plaint is without any merit.

11. In that view of the matter, I am of the opinion that the learned Trial Judge has not acted illegally and with material irregularity in passing the impugned order. The application under Order 7 Rule 11 of the C.P.C. is wholly misconceived. Accordingly, I am of the view that this application is devoid of merits. So, the application is dismissed.

12. However, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.