

(1925) 01 CAL CK 0023
In the Calcutta High Court

Sourendra Nath Mitra and Another

APPELLANT

Vs

Jatindra Nath Ghose and Others

RESPONDENT

Date of Decision : 08-01-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5

Citation : AIR 1925 Cal 990 : 87 Ind. Cas. 737

Hon'ble Judges : Suhrawardy, J;Cuming, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This Rule was issued on the ground that the plaint does not disclose a cause of action and, therefore, the Court below oughts to have dismissed the application of the opposite party for leave to sue in forma pauperis. The plaintiffs' ancestors mortgaged certain properties and in execution of the decree on the mortgage the mortgaged pro-parties were purchased by the predecessors-in-interest of the defendants. An application was made by the mortgagors to have the sale set aside u/s 244 of the old Civil Procedure Code, which was dismissed. The present suit is brought in respect of certain subordinate tenures to the taluk which according to the plaintiffs were never mortgaged. The plaintiffs' case is that the property that was mortgaged and sold was the taluk and not the subordinate tenures. The only question, therefore, that I am asked to look into is if the plaint in this case discloses a cause of action under Order XXXIII, Rule 5. It is not necessary for me to go to the length of holding that if the plaint as a matter of facts, does not disclose a sufficient cause of action but if the Court below wrongly holds that it does, we have no jurisdiction u/s 115 to interfere with that order. But in this case the plaint discloses a cause of action, however weak it may be, according to the petitioners' allegations and, therefore, it is not proper that we should interfere with the order of the Court below. Reading paras. 5 and 6 of the plaint together it appears that the plaintiffs' case is that the property that was mortgaged was the taluk and what was sold was the taluk. The subordinate tenures were not sold at all. It further alleged that the interpolations in the sale proclamation were made

presumably after the sale. If the plaintiffs succeed in proving these facts they cannot be met by objection that the suit does not lie u/s 214 of the Code of 1832. If all these questions are to be determined here as also the objections taken before us, it may very well be deciding the case. As I have observed, the allegations of the plaintiffs may be right or wrong but they do disclose a cause of action within the meaning of law. It is upon these allegations in the plaint that the Court below has observed that there is nothing in the evidence of the applicants themselves from which it can be held that the properties in dispute were, in fact, sold. In this view of the matter I decline to interfere with the order of the Court below,

2. The Rule is, therefore, discharged with costs three gold mohurs.

3. Let the record be sent down at once.

Cuming, J.

4. This is an application u/s 115, C.P.C., for revision of an order of the Second Subordinate Judge of Barisal, granting the petitioners leave to sue in forma pauperis. It is not necessary for me to set out the facts of the case as they have been stated by my learned brother in the order which he has just delivered. The petitioners in support of the application urge two points. First of all they contend that the learned Judge did not consider - the allegations in the plaint but only considered the evidence of the plaintiffs in deciding as to whether the suit was or was not maintainable. On reading the order of the learned Subordinate Judge fairly it seems to me that what the learned Judge meant to say was that the only evidence to be looked into was the plaintiffs' own statements and that it was not open to him to consider any further evidence. It is, I think, clear that in passing his order and deciding whether the suit was or was not maintainable he was considering the allegations as set forth in the plaint.

5. The next point urged by the learned Advocate appearing for the petitioners is that the plaint does not disclose a cause of action. Whether the plaint does or does not disclose a cause of action, it is not necessary for me to decide. The learned Judge has decided that the plaint does disclose a cause of action and it is difficult to see how in deciding that the plaint discloses a cause of action he has exercised a jurisdiction not vested in him by law or failed to exercise jurisdiction so vested in him or has acted in the exercise of his jurisdiction illegally or with material irregularity. The learned Advocate who has appeared for the petitioners complains of the action of the Judge under Clause (c) of Section 115, C.P.C, namely, that he acted in the exercise of his jurisdiction illegally or with material irregularity. What the learned Judge has done is that he has decided that there is a cause of action. This decision may be absolutely wrong. But in coming to this decision it is difficult to see how he acted illegally or with material irregularity. It has been pointed out by the Privy Council that the Court has jurisdiction to decide rightly or wrongly and a wrong decision even though on a question of law can by no stretch of imagination be considered to be illegal

exercise of jurisdiction or exercise of jurisdiction with material irregularity. I, therefore, agree with my learned brother in discharging this rule.