

CIVIL REVISION
Present

The Hon'ble Mr. Justice **Prasenjit Mandal**
Judgement On: August 20, 2010.
C.O.No.3792 of 2008

Nityananda Das.

Versus

Usha Rani Das & Ors.

Points:

Rejection of plaint: Suppression of material facts in the plaint alleged by the defendant whether can be considered at the hearing of the application for rejection of plaint-Code of Civil Procedure,1908-0 7 R 11

Facts:

Suit filed for declaration of title and injunction. Defendant filed application for rejection of the plaint alleging that the question has been decided in the writ proceeding against the plaintiff and he suppressed the said fact in the plaint.

Held:

There may be suppression of certain facts in the plaint; but it is not the proper stage to consider whether anything has been suppressed as contended by the petitioner. At the appropriate stage, such defence could be agitated. On a plain perusal of the copy of the plaint, Court does not find any reason for which the plaint is liable to be rejected.

Para 5

Cases cited:

Hardesh Ores (P) Ltd. Vs. Hede & Company, (2007) 5 SCC 614 and
Popat & Kotecha Property Vs. State Bank of India Staff
Association, (2005) 7 SCC 510

For the Petitioner: Mr. Tapas Midya,
Mr. A. B. Chakraborty.

For the opposite parties: Mr. Kaushik Dey.

Prasenjit Mandal, J.: This application is at the instance of the defendant no.1 and is directed against the order no.18 dated July 24, 2008 passed by the learned Civil Judge (Junior Division), Sixth Court, Alipore in Title Suit No.254 of 2006 thereby rejecting an application under Order 7 Rule 11(d) of the Code of Civil Procedure.

2. The plaintiffs/opposite parties filed the title suit for a decree of declaration that the plaintiffs are the absolute owners in respect of 1/4th share each in the suit property, as described in schedule A & B, a decree of declaration that the alleged deed of 1990 in favour of Nityananda Das and others is void and not binding upon the plaintiffs and for permanent injunction not to

sell the suit property and not to change the nature and character of the suit property. In that suit, the defendant appeared. Thereafter, he filed an application under Order 7 Rule 11(d) of the C.P.C. stating, inter alia, that the plaintiffs suppressed the fact that previously the plaintiff no.2 filed a writ petition under Article 226 of the Constitution of India praying for certain reliefs which is same with the relief sought for in the suit and that the application was disposed of on June 29, 2004 finding that the property did not pass to any of his heirs on the death by reason of law of succession. Being aggrieved, the plaintiff no.2 preferred an appeal before a Division Bench at Calcutta and the Hon'ble Division Bench dismissed the said appeal. Therefore, this suit is not maintainable in the present form.

3. Mr. Midya, learned Advocate appearing on behalf of the petitioner, has submitted before this Bench in the same manner just referred to above and he has stated the specific case numbers of the writ petition and the appeal arising therefrom and thus he has submitted that the plaint should be rejected. The learned Trial Judge was not justified in rejecting the application. In support of his contention Mr. Midya has also referred to the decision of Hardesh Ores (P) Ltd. Vs. Hede & Company reported in (2007) 5 SCC 614 and Popat & Kotecha Property Vs. State Bank of India Staff Association reported in (2005) 7 SCC 510.

4. On the other hand, Mr. Dey, learned Advocate appearing on behalf of the opposite parties, has submitted that at the initial stage there is no scope for consideration of those documents being of the nature of defence. On perusal of the plaint, it does not appear that the suit is barred by limitation.

5. Having considered the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that the copy of the plaint as made Annexure 'A' to the application does not lay down about filing of the writ application and the order of disposal of the same. It also does not lay down the appeal preferred by the plaintiff no.2 against the order of the Hon'ble Single Bench had been dismissed. There may be suppression of certain facts in the plaint; but it is not the proper stage to consider whether anything has been suppressed as contended by the petitioner. At the appropriate stage, such defence could be agitated. On a plain perusal of the copy of the plaint, I do not find any reason for which the plaint is liable to be rejected.

6. As regards the decision reported in the case of Popat & Kotecha Property Vs. State Bank of India Staff Association (supra) lays down the general principles of object, nature, scope and

applicability of Order 7 Rule 11(d) of the C.P.C. There is a clear indication that an application under Order 7 Rule 11(d) of the C.P.C. lies only where the statement as made in the plaint without any doubt or dispute shows that the suit is barred by any law in force. It does not apply in case of any disputed question. Therefore, since on perusal of the copy of the plaint, it does not appear that the suit is barred by the provision of Order 7 Rule 11(d) of the C.P.C., I am of the view that the suit can proceed well.

7. As regards the other decision of Hardesh Ores (P) Ltd. Vs. Hede & Company (supra) I do not find that this decision relates to a different subject relating to omitting to claim, foundational relief and claiming the consequential relief only to get around bar or limitation enforcement of contractual obligation, etc. The present case does not deal with such matters. So, this decision does not support the case of the petitioner.

8. In view of the above observations, I hold, that there is nothing to interfere with the impugned order. Accordingly, this application is dismissed.

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

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

(Prasenjit Mandal, J.)