

SOUMIK SIL

v.

SUBHAS CHANDRA SIL
Civil Appeal No. 4003 of 2014

MARCH 25, 2014

[GYAN SUDHA MISRA AND
PINAKI CHANDRA GHOSE, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

O.7, r.11-- Rejection of plaint -- Title suit by mother and son for declaration and permanent injunction in respect of a flat - In a different matrimonial case, High Court ordered the mother to vacate the premises in lieu of the amount to be paid by her husband- Application by mother in title suit under O.7, r.11 -- Rejected by trial court, allowed by High Court -- Held: High Court has correctly perused the plaint in its entirety and after deletion of name of first plaintiff from title suit, held that plaint discloses no cause of action, as the very purpose of the suit has become infructuous in view of the order passed by High Court to hand over possession of the flat in question - Thus, provisions of O.7,r.11(a) are attracted.

In a title suit for declaration and permanent injunction filed by mother and son against the husband, who was a joint owner of the flat in question, the mother, plaintiff no.1, filed an application under O.7, r.11 of the Code of Civil Procedure, 1908 for deletion of her name from the plaint, in order to give effect to another order of the High Court in the matrimonial case by which she was required to handover the possession of the suit flat in lieu of the money to be paid by her husband. The trial court rejected the application, but on a revision petition by the defendant, the High Court allowed the application holding that handing over of possession of the flat was to carry

A out the order of the High Court in the matrimonial case and plaintiff no.2, being the son, had no cause of action in the matter.

Dismissing the appeal, the Court

B HELD: 1.1 The High Court perused the plaint in its entirety and after deletion of the name of plaintiff No.1 from the said title suit, has correctly held that the plaint discloses no cause of action, as the very purpose of the suit has become infructuous in view of the order passed C by the High Court to hand over the possession of the flat in question. [para 12] [828-E-G]

D 1.2 The plaint discloses no cause of action and thereby it attracts the provisions of O.7, r.11(a) of the Code and, accordingly, the High Court has correctly ascertained the position and allowed the said application reversing the order of the trial court. There is no infirmity in the order passed by the High Court. [para 13-14] [829-B-C]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4003 of 2014.

From the Judgment and Order dated 10.02.2011 of the High Court of Calcutta in Co. No. 104 of 2011.

F Ranjan Mukherjee, S.C. Ghosh, S. Bhoumick, R.P. Yadav for the Appellant.

C. Mukund, Pankaj Jain, P.V. Saravana Raja, Firdouse Qutbwni, Bijoy Kumar Jain for the Respondents.

G The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

H 2. This appeal is directed against an order passed by the High Court dated February 10, 2011 whereby the application filed by the respondent herein under Order VII Rule 11 of the

Code of Civil Procedure (for short 'the Code') was allowed and the plaint was rejected. The High Court set aside the order passed by the Trial Court refusing such prayer.

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3. The facts of the case, briefly, are as follows :

3.1) A suit was filed for declaration and injunction by the appellant along with Smt. Ashima Sen, mother of the present appellant. The appellant herein and plaintiff No.1 (the mother) filed a suit being Title Suit being No.2430 of 2007 before the City Civil Court at Calcutta, and the following reliefs were prayed for in the said suit :

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"a) For a decree for declaration that the defendant, his men and agents have no right to obstruct the user of the suit flat by the plaintiffs by any means prejudicial to the interest of the plaintiffs.

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b) For a decree permanent injunction restraining the defendants, their men, agents and associated from causing any obstruction towards free ingress and egress of the plaintiffs, for use and occupation of the suit flat at 5, Netai Babu Lane, Kolkata- 700 012, in any manner prejudicial to the interest of the plaintiffs.

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c) Temporary injunction with ad-interim order in terms of prayer (b) above;

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d) Commission;

e) Costs of the suit

f) Any other relief or reliefs as the Ld. Court may deem fit and proper"

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3.2) The said suit was filed on the facts stated in the plaint that plaintiff No. 1 (Smt. Sen) and the defendant – Subhas Chandra Sil were married on 2nd June, 1986. Out of the said

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A wedlock, plaintiff No.2 – Soumik Sil was born on 20th April, 1989. Admittedly, the mother and son resided in the two rooms in the first floor of the premises No.5, Netai Babu Lane, Kolkata-700 012, being the matrimonial home of plaintiff No. 1.

B 3.3) Admittedly, the defendant was a joint owner of the said premises along with his two brothers. Subsequently, the eldest brother gifted his 1/3rd share in the said premises to his two brothers, and thereby the defendant and one of his brothers became the owners of the said premises in equal shares. On
C December 17, 1993 the said property was partitioned between them and the portions were demarcated between the two brothers.

D 4. The defendant filed a suit for dissolution of marriage in the City Civil Court at Calcutta which was transferred before the Family Court and on 15th July, 1998 a decree for dissolution of marriage was passed by the Family Court against plaintiff No.1. Being aggrieved, she preferred an appeal before the High Court which, in turn, was pleased to pass the following
E order :

F “In the facts of the present case, we are of the view that a sum of Rs.4,00,000/- should be paid by the husband to the wife provided the wife hands over the vacant possession of the rooms over which she has already filed a suit in the City Civil Court to the husband within a month from today. Simultaneously, with the surrender of possession, the husband will pay a sum of Rs.2,00,000/- by account payee cheque of any nationalised bank in the name of the wife to be handed over to the learned Advocate for the
G appellant and will pay the balance amount of Rs. 2,00,000/- by March, 2009. If the first instalment of Rs.2,00,000/- is paid, from that moment, the husband will pay the monthly alimony at the rate of Rs.2,500/- instead of the existing alimony of Rs.5,000/-. The moment the
H balance amount of Rs.2,00,000/- will be paid, the husband

will not be required to pay any further monthly sum as alimony. If the wife fails to deliver vacant possession of the rooms mentioned above within a month from today, this part of the order granting permanent alimony will stand recalled and the wife would be free to initiate fresh proceedings for fixation of permanent alimony on the basis of the then income of the husband after taking into consideration the conduct of the wife as provided in Section 25 of the Act.

The decree for divorce is, thus, affirmed with the aforesaid additional direction as regards permanent alimony."

5. In these circumstances, in accordance with the said order the wife duly gave effect to the order of the High Court and filed an application before the City Civil Court, Calcutta, for deletion of her name as the plaintiff No.1 from the said suit. In the wake of the above, an application for rejection of plaint under Order VII Rule 11(a) of the Code of Civil Procedure was filed by the defendant (husband/father) and it was stated that the remaining plaintiff had no cause of action to institute the suit against the defendant and that the plaint does not disclose any cause of action.

6. After hearing the parties, the City Civil Court at Calcutta was pleased to reject the said application on 13th December, 2010. Being aggrieved and dissatisfied with the said order, a revision petition was filed against the said order by Subhas Chandra Sil, being the defendant in the said suit before the High Court. The High Court after perusing the facts as stated hereinabove, and after considering the averments made in the plaint held that after deleting the name of plaintiff No.1 from the plaint, it is clear from the averments that the plaint discloses no cause of action, and accordingly held that plaintiff No.2 has no independent cause of action to proceed with the suit and the handing over of possession of the suit premises is nothing but to carry out an order passed by the High Court and thereby

A plaintiff No.2 being the son, cannot have any cause of action
in the matter. In view of the above, the High Court reversed the
order of the trial court, allowed the application and rejected the
plaint. Being aggrieved, this appeal has been filed on the
ground that the said property is a trust property and that the
B appellant has a right to reside there as one of the trustees, and
that he as a legal heir and son of the respondent, is entitled to
reside in the suit property in terms of the trust deed.

C 7. It is also to be noted that to assert such right, the
appellant herein has already filed a suit before the City Civil
Court at Calcutta, being T.S. No. 2451/2008, being a suit for
declaration, accounts and permanent injunction and thereby it
appears to us that the appellant has already taken steps in the
matter to assert his rights and title in respect of the said
property in the said suit.

D 8. The sole question which arises for our consideration is
whether the High Court was right in rejecting the plaint holding
that the plaint does not disclose any cause of action.

E 9. Learned counsel appearing on behalf of the appellant
submitted that the appellant is the son of the respondent and
is a trustee of the said trust property and he used to reside at
the said premises with his mother. It is further submitted that
he has a right to occupy the said premises in terms of the
registered deed of settlement. He further stated that in
accordance with the deed of settlement, after the death of the
original settlor Mrinalini Dassi, the trust property would devolve
for the use and benefit of her male heir in the male line in equal
shares absolutely and for ever. Therefore, it is contended that
he has a right to stay in the said premises, and accordingly
F submitted that the plaint discloses no cause of action.
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H 10. Per contra, it is submitted that the possession was
handed over by the mother and son pursuant to the directions
given by the High Court and the premises were vacated in
compliance with the said order. After handing over the

possession in terms of the order dated 22nd August, 2008, there was no cause of action subsisting in Title Suit No.2430 of 2007. In these circumstances, it is submitted that the order passed by the City Civil Court, Calcutta, rejecting the said application of the respondent under Order VII Rule 11 is wrong. The ground that the said trial court did not consider that the cause of action in the suit was in connection with the possession of the rooms in question and the said rooms were handed over pursuant to the order passed by the High Court. Therefore, the said cause of action as pleaded in the plaint by the plaintiffs and/or by the son was not subsisting after the order of the High Court. In these circumstances, the High Court correctly reversed the said order by allowing the said application in favour of the respondent after perusing the averments in the plaint. It is further submitted that the appellant is in gross suppression of material facts from this Court that the appellant did institute a suit on the basis of the rights claimed under the said trust deed which is pending for adjudication before the City Civil Court at Calcutta, being Title Suit No.2451/2008. In the plaint the plaintiffs/appellants did not aver that their rights flow from the trust deed as they tried to point out here.

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11. It is necessary for us at this stage to set out the relevant provisions of Order VII Rule 11 of the Code :

"11. Rejection of plaint

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The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the

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A plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

B (d) where the suit appears from the statement in the
 plaint to be barred by any law:

 (e) where it is not filed in duplicate;

 (f) where the plaintiff fails to comply sub-rule (2) of rule
C 9;

 Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by
D any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

E 12. After perusing the order passed by the High Court and the reasoning given therein, it appears to us that the High Court has correctly perused the plaint in its entirety and after deletion of the name of plaintiff No.1 from the said Title Suit, held that
F the plaint discloses no cause of action after taking into account the fact that the very purpose of the suit has become infructuous in view of the order passed by the High Court to hand over the possession of the rooms in question. Therefore, the foundation of the suit was not subsisting after the handing over of
G possession to the defendant by plaintiff No.1 in terms of the order. Hence, in these circumstances, the High Court held that the plaint discloses no cause of action.

 13. Now, it is necessary for us to find out whether the plaint discloses any cause of action, after deletion of the name of
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plaintiff No. 1 in Title Suit No. 2430 of 2007. We have gone through the averments made in the said plaint. After perusing the averments and on the basis of its entirety and considering that the statements made in the plaint are correct, it appears to us that the plaint discloses no cause of action and thereby it attracts the provisions of Order VII Rule 11(a) of the Code, and accordingly we hold that the High Court has correctly ascertained the position and allowed the said application reversing the order of the City Civil Court at Calcutta.

14. In these circumstances, we do not find any infirmity in the order passed by the High Court. We find no merit in the appeal and the same is, accordingly, dismissed.

R.P.

Appeal dismissed.