

Title Appeal No.99 of 2024.

Order No.08 dated 23.09.2024.

Today is fixed for passing order.

Both sides file their respective hazira.

The record is taken up for passing order.

On 19.09.2024 maintainability petition filed by the respondent no.1 and 151 of CPC petition filed by the appellant club were heard in presence of both sides.

Respondent no.1 by filing a petition challenged the maintainability of the appeal on the ground that the appellant is an unregistered club and there is no sufficient representation of the club. At the time of institution of title suit no.142/04 before Ld Civil Judge (Jr, Div) 5th court, Howrah, the plaintiff / appellant never obtained any leave u/o 1 rule 8 of CPC as the appellant is not a juridical person having locus standi to file such suit. Udayachal club has not been represented by its managing committee as required under the statute subject to obtaining permission from court. Accordingly, respondent no.1 filed the petition praying for deciding the maintainability of the appeal at first.

Appellant filed written objection against the petition wherein it is alleged that the maintainability petition is purposefully filed to deny the hearing of put up petition. It is denied that the appellant is unregistered club and there is no sufficient representation of the club. It is also denied that the plaintiff / appellant did not obtain leave u/o 1 rule 8 of CPC. It is also denied that Udayachal club has not been represented by its managing committee subject to permission of court. Appellant further raised the point that respondent no.1 has not preferred any cross appeal and so the point of maintainability of the appeal can not be raised. Ld Court below has framed an issue regarding the maintainability of the suit on the ground of non-registration of club and only if the same is decided against the plaintiff then only the appeal can be taken up for hearing on the point of maintainability. Udayachal club and Jhorhat Rajarbagan Udayachal club is same and identical club situated at the schedule property but the respondent with mala fide motive for the purpose of harassing the appellant is obstructing in celebration of Puja. There is no merit in the said application and is liable to be rejected. There is no other separate club in the suit property excepting Udayachal club. Accordingly prayed for rejection of the petition.

At the time of hearing of the petition, Ld Advocate for the respondent no.1 submitted that the appellant / club is unregistered club and has not been sufficiently represented by its members or by managing committee of the club. No leave u/o 1 rule 8 of CPC is taken. My attention is drawn towards order 41 rule 20 of CPC and it is submitted that all the parties to the suit have not been impleaded in this appeal and accordingly the appeal is also hit by the provision of order 41 rule 20 of CPC. In support of his submission, he relied upon decisions reported in 94 CWN 67, AIR 1959 Bombay 491, 2010- I-CHN-Cal 21, 97 CWN 614.

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On the other hand, Ld Advocate for the appellant submitted that no cross appeal has been filed by the respondent no.1 challenging the decision of the court below on the point of maintainability of the suit which was decided by the court below while deciding issue no.1, which is decided in favour of the plaintiff / appellant and the suit was found maintainable. My attention is also drawn that since the suit has been decided as maintainable by the court below, this court cannot decide whether the appeal is maintainable or not since the law permits right to appeal as per the provision of section 96 of CPC. This right to appeal cannot be decided in the preliminary form without entering into the entire gamut of dispute between the parties and without considering the entire judgement of the court below on all the issues. Accordingly, he submitted that the present petition filed by the respondent no.1 is fit to be rejected. It is also submitted that the cross appeal as claimed by the respondent no.1 to have been filed is not in proper form as provided in the law.

Considering the submissions of both sides and on going through the lower court record and the impugned judgement, it appears that issue no.1 has been decided by the court below in favour of the appellant and the suit has been found well maintainable in law. In the WS, I find that the respondent no.1 took plea of non-maintainability of the suit as per the provision of order 1 rule 8 of CPC but the said plea has not been reflected in the findings of the court below was decided issue no.1. Moreover, since the court below has found the suit is well maintainable while writing the judgement which contains other issues also which has been challenged in this appeal, it is not proper to come to any findings as regards to maintainability of the appeal at this preliminary stage. Moreover, if all the parties who were made party in the suit before the court below are not made party in this appeal, they are required to be made party in this appeal as per the provision of order 41 rule 20 of CPC but that cannot be a ground to make the appeal not maintainable. As such at this stage, keeping the point of maintainability open for the parties at the time of final hearing, present petition filed by the respondent no.1 is considered and rejected.

Now, application u/s 151 of CPC filed by the appellant is taken up for passing order.

By filing petition u/s 151 of CPC, appellant has submitted that the appellant is a registered club being Government Registration No.S/IL/02497 situated at Jhorhat, Rajarbagan under PS – Sankrail, Dist. Howrah and the said club has been possessing the property comprise within dag no.482 khatian no.125, mouza – Jhorhat, PS – Sankrail Dist, Howrah for more than 56 years peacefully, uninterruptedly, without any objection from any corner and they have been performing Durga Utsav at the above mentioned dag by banner of Registered club year by year. The club perform Durga Puja and Laxmi Puja up to 2023 in the suit property and permission was given by the Ld Trial Court in 2023 to that effect. On previous occasion, respondents objected against performing Durga Puja

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and Laxmi Puja by the appellant club and for which appellant filed an appeal before the Ld District Judge, Howrah. The respondents are very notorious and dangerous elements of the locality and with the help of anti social elements, they are threatening the appellant that they will not allow the appellant for performing Durga Puja and Laxmi Puja in the suit property for the year 2024 and also threatening that without court's order they will not allow the appellant for performing Durga Puja and Laxmi Puja in the suit property. Therefore, the appellant apprehend that without permission of court, they will not be in a position to perform Durga Puja and Laxmi Puja in the suit property. Accordingly the appellant prayed for necessary permission. Appellant further undertake that they will not create any damage to the suit property. Accordingly, appellant prayed for permission to perform Durga Puja, Laxmi Puja and cultural program in the suit property for the year 2024 from 10.09.24 up to 18.10.24.

Respondent no.1 filed objection against such petition stating that Ld court of 5th Civil Judge (Jr Div) Howrah was pleased to reject the plaintiff / appellant's prayer to organize cultural program vide its order dt. 13.09.23. It is further stated that the name of the club Jhorhat Rajarbanag Udaychal club is registered under West Bengal Societies Registration Act 1961 but the club which has come up before court with having different names than the club which is registered. There is no existence of Udayachal club. Hon'ble High Court was pleased to pass an order that "Ld Appeal Court though did not grant the entire relief to the petitioner to perform Durga Puja but granted leave to the petitioners in such a manner so that the defendant cannot exercise their unfettered right for holding Durga Puja on the suit property and also pleased to pass direction upon the Trial Judge to dispose the suit within 6 months without allowing any unnecessary adjournment to any of the parties". On 29.06.24, Ld 5th Civil Judge (Jr Div) Howrah dismissed the title suit no.142/2004 and now Udayanchal club have / had no right, title and interest and possession in respect of the suit property and there is no injunction order over the suit property as per Hon'ble High Court's court. Udayachal Club has alternative place for holding Durga Puja and Laxmi Puja but they are intentionally trying to hold Durga Puja and Laxmi Puja over the suit property to grab the property of respondent no.1 and others. Accordingly, prayed for rejection of the petition.

At the time of hearing, Ld Advocate for the appellant submitted that the Puja is being organized for last 20 years as per the order of the court and accordingly prayed that the same should be allowed. On the other hand, Ld Advocate for the respondent no.1 submitted that there was no order of Hon'ble Court in this regard. Appellant has already misused the law for last 20 years. Suit property is residence of respondent no.1 and since the suit of the appellant / plaintiff failed and they cannot establish their right over the suit property, such prayer cannot be allowed.

Considering the submissions of both sides and on going through the LCR, I find that the plaintiff / appellant had filed title suit no.142/04 praying for decree of declaration that the plaintiff is the owner, possessor of the suit property by way of adverse possession and also prayed for permanent injunction. In the impugned judgement, Ld Court below after considering the evidences of the parties has come to the findings that there is no evidence that the club is situated on the suit property and the plaintiff / club failed to prove its right, title, interest on the suit property. It is also observed by the court below that club every year took permission from court for Durga Puja but this permission never created any right to the plaintiff upon the suit property. Ld court below also observed that use with permission never creates any title. A copy of the order of Hon'ble High Court in CO No.3105 passed on 22.09.2003 is available in the LCR. One suit being title suit no.142 of 2004 filed by the club against the respondents for declaration of title by way of adverse possession and another suit is filed against the club praying for declaration of right, title, interest and for relief of injunction. In the said order, it is further observed by Hon'ble High Court that "This court finds that the Ld Appeal Court though did not grant the entire relief to the petitioners but granted relief to the petitioners in such a manner so that the defendants cannot exercise their unfettered right for holding Durga Puja on the suit property". In the said order, it is further observed by the Hon'ble Court that "But this is a recurring problem and such problem, in my view cannot be solved until disposal of the suit, this court, by taking note of the fact that both the suits have matured for hearing, requests the Ld Trial Judge to consolidate both the aforesaid suits and disposed of both the suits as early as possible but preferably within a period of 6 months from the date of communication of this order without granting any unnecessary adjournment to any of the parties."

At this stage, since the suit has been disposed of and the court below has come to the findings that the appellants could not prove their right, title, interest and possession over the suit property by way of adverse possession, appellants cannot claim any right of usage upon the suit property in the name of organizing Durga Puja and Laxmi Puja taking the aid of the court to infringe the right, title, interest and possession of the owner of the suit property unless the findings and judgement of the court below is set aside and cancelled. As such I do not find any reason to allow the petition filed by the appellant u/s 151 of CPC since prima facie the appellants have no right upon the suit property. Accordingly, petition u/s 151 of CPC filed by the appellants is considered and rejected on contest.

Fix 21.12.24 for hearing of the appeal.

Additional District Judge,
2nd Court, Howrah.

