

L.R. Misc Case 5 of 2023

Order No. 19 dated: 20.08.2024

Today is fixed for passing Order in respect of the petition u/Or 7 r 11 of CPC filed by the OP No.1.

Ld. Advocate for the OP No.1 submitted that the deed under preemption as mentioned by the petitioners in their application is 03.03.2023 rather the deed was registered on 05.03.2023. From the deed being No. 1270/2023 it is crystal clear that the property is situated within mouza Moyrachak whereas in the schedule 'B' of the preemption application it is mentioned that the property is situated in Amta mouza. So it is crystal clear that at the time of institution of the case no cause of action arose in respect of the property covered under the deed under preemption. The petitioners admitted in their application or amendment that there is wrong description of the actual name of mouza in respect of the suit property. Moreover the date of cause of action is not mentioned in the application u/S 8 & 9 of the WBLR Act. So due to such non-disclosure of the cause of action in respect of the property under preemption the case will be rejected under order 7 rule 11(A).

OP No.1 relied on case law – P.V. Guru Raj Reddy and Anr vs. P.Neeradha Reddy and Ors.

Ld. Advocate for the petitioner raised vehement objection and denied the averment of the OP No.1. They further stated that it is a typographical mistake and they have duly filed the amendment application. Hence the petition is not maintainable.

Heard. Considered.

On perusal of both the contentions of both the parties, it is seen that the date of execution of the deed is 5th March 2023 but they have mentioned the date of the deed as 3rd March 2023. The mouza in the schedule of the application is also wrongly mentioned. It is pertinent to mention here that the petitioner had filed an application for amendment claiming that it is merely a typographical error and needs to be amended.

Regarding the cause of action it can be said that the cause of action has already arisen when the petitioners came to know about the impugned sale deed and the date is duly mentioned in the application. It is also not barred by any limitation.

So merely for the misdescription of the mouza the suit cannot fail.

Therefore, by considering the petition dated 19.08.2023 u/Or 7 r 11 of CPC as a succulent extract of a clever drafting this Court is inclined to reject the petition u/Or 7 r 11 of CPC.

Hence, it is

ORDERED

That the petition dated 19.08.2023 u/Or 7 r 11 r/w 151 of CPC is hereby rejected on contest without any order as to cost and disposed of.

Fix **05.12.2024** for hearing of the application u/S 151 of CPC WO if any.

Dictated & corrected by me

CJ

**Civil Judge (Jr.Div.)
Amta, Howrah**