

EJECTMENT SUIT NO. 424 of 2013 (Reg No:- 5810 of 2014)
C.N.R No. WBPS01-000493-2013

IN THE COURT OF 4TH BENCH, PRESIDENCY SMALL CAUSE COURT,
CALCUTTA
PRESENT: SMT. ARCHITA SEN, JUDGE, 4TH BENCH, PRESIDENCY SMALL
CAUSE COURT, CALCUTTA.

ORDER NO- 125
DATED 16-05-2024:

Today is fixed for passing order in respect of the petition dated 21.09.2021 under section-151 of the C.P.C filed by the defendant. Both the parties file separate attendance through their respective Ld. Advocates.

The record is taken up for passing order.

Perused the case record including the petition dated 21.09.2021 as well as the written objection filed against such petition.

Considered.

The petition dated 21.09.2021 contemplates an order holding that this Court has no jurisdiction to entertain the instant suit. The grounds banking on which the defendants filed this petition are that the relationship of landlord and tenant does not exists between the parties because the erstwhile owner Khetra Mohan Kar agreed to sell the entire first floor of the suit building to defendant no.1 and also agreed to sell the entire ground floor of the suit building to defendant no.2 by entering into two separate agreements for sale dated 10.03.1996 and received Rs.2,50,000/- each from defendant no.1 and 2 as the earnest money. So defendant no.1 and 2 are occupying the suit premises as the purchasers on the strength of the sale agreements dated 10.03.1996 as well as they are enjoying the joint tenancy of their father Sudhin Kumar De on his death. In such premises the erstwhile owner Khetra Mohan Kar had no right to execute Will in respect of the suit building because he was bound by the sale agreements entered into by him. On the death of the erstwhile owner, his legal heirs are also bound by those two sale agreements. If any Probate is obtained in respect of the Will of Khetra Mohan Kar, that would be nullity. The plaintiff has suppressed all these facts in the plaint. In the backdrop of the above factual matrix it was submitted on behalf of the defendant that this Court does not have the jurisdiction to entertain the suit as it involves substantial question of title. It was further submitted by him that to ascertain whether a suit is cognizable before the Small Cause Court or not, the Court has to appreciate not only the contents of the plaint but also the plea raised by the defendant in the written statement. For the aforesaid reasons the defendant has prayed for an order holding that this Court has no jurisdiction.

Written objection was filed by the plaintiff wherein it has been stated that the evidence of the parties has been completed and the final argument of the suit was going on. On the date on which the defendants were under direction to complete the argument, the defendant came up before the Court with the instant petition. In spite of the direction of the Hon'ble High Court, Calcutta, the defendants are trying to delay the disposal of the suit. It was submitted on behalf of the plaintiff that the sale agreements dated 10.03.1996 have no bearing on the issues involved in the suit. The defendant could have filed a suit for specific performance of contract against the erstwhile owner. But without doing that the defendants are raising such frivolous grounds before this Court only to drag the suit longer. It was further submitted by him

that while deciding as to whether the Court has jurisdiction to try a particular suit or not, the Court has to confine itself within the four corners of the plaint; not the claims made in the written statement. Banking on these submissions the plaintiff prayed for rejection of the instant petition.

Amidst the hubbub of the rival submissions made by both the parties and after careful scanning the voluminous record this Court could adumbrate that the suit has reached at the fag end. At that stage the defendant agitated that this Court has no jurisdiction to try the suit. Surprisingly, the two agreements, banking on which the defendants have raised the jurisdictional issue, have already filed by them and those two agreements are marked as Exhibit-J collectively. So they were conversant with those documents and could have raised the point at least at the time of evidence of defence witnesses. But they waited for the completion of the trial. Definitely this Court will not turn down the prayer of the defendants only on the ground of late filing of the instant petition. But this conduct of the defendants makes an impression in the mind of the Court that the defendants are not interested to see the end of this litigation.

Be that as it may, it can be gathered from the petition dated 21.09.2021 that defendant no.1 and 2 are considering themselves as purchasers of the respective portions of the suit building on the strength of the agreements dated 10.03.1996 and for that reason they are claiming that they are possessing the suit premises as per the provision of section-53A of the Transfer of Property Act, 1882. Those two agreements are available in the record and this Court can take Judicial Notice of those two agreements. But even without going through those agreements it can be stated that an agreement for sale can not confer a better title to the person who has agreed to purchase than the owner of the property. Unless and until the sale is registered, the title of the property does not transfer to the purchaser. On the strength of the agreements dated 10.03.1996 defendant no.1 and 2 have not acquired any title in respect of any portions of the suit building. Those were the contracts for sale the suit building on the fulfillment of the terms and conditions stated therein and defendant no.1 and 2 are mere prospective purchasers. The contract can be rescind on the failure to fulfill the conditions. Though defendant no.1 and 2 stated in the petition that the erstwhile owner received Rs.2,50,000/- as the earnest money, but on perusal of the agreements dated 10.03.1996 it can be found that only Rs.7,500/- was paid on the date of the agreement and it was agreed that the rest of amount would be paid on the date of completion of sale which shall be within six months from the date of agreement. The record is devoid of any documents which can show that the rest amount was paid to the erstwhile owner at all. The erstwhile owner was certainly bound by these two agreements for sale. On the event of failure on the part of the owner to perform the contract, the defendants required to file suit for specific performance of contract within three years. This Court is in dark about whether any such suit filed by the defendants exists or not. Defendant no.1 and 2 could have been armed with the registered title deeds if they would have filed the suit for specific performance of contract.

As the agreements dated 10.03.1996 have not turned into registered deeds of title, the status of defendant no.1 and 2 has not changed from 'tenant' to 'owner'. They have remained only prospective purchasers and can not qualify themselves as purchasers on the basis of those two agreements for sale. As the status of the defendants has not been changed because of the agreements dated 10.03.1996, then the instant suit can very well be entertained by this Court. According to the provision

of section 19(g) of the Presidency Small Cause Courts Act, 1882, the Small Cause Court shall not have the jurisdiction to try suits for determination of any other right to or interest in the immovable property. The instant suit is filed for recovery of possession by evicting the defendant. So it is a simple suit of ejectment. This Court can not give a colour of title suit to it basing on the contentions of the defendants in their written statement. The scenario would have been otherwise if the defendants prayed for a decree for declaration in the form of counter claim in their written statement. But that is not the case.

Strolling on the path of the above discussion, it can be concluded by saying that the jurisdiction of this Court is not ousted because of the agreements dated 10.03.1996. As such the petition dated 21.09.2021 has no merit, thus deserves to be rejected.

For that, it is

ORDERED

That petition dated 21.09.2021 under section-151 of the C.P.C filed by the defendants is rejected on contest and without cost.

To 14.06.2024 for hearing of the petitions dated 03.05.2024.

Typed, Corrected and Printed by me.

Judge, Bench-4
PSCC, Calcutta
J.O Code WB01174

Judge, Bench-4
PSCC Calcutta
J.O Code WB01174