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**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

CS/218/2024

IA NO: GA/1/2024, GA/3/2024

TAGGAS INDUSTRIAL DEVELOPMENT LTD

VS

SEWNARAYAN KHUBCHAND AND ANR

WITH

CS/219/2024

IA NO: GA/1/2024, GA/3/2024

SOMNATH ENCLAVE PVT LTD

VS

SEWNARAYAN KHUBCHAND AND ANR

BEFORE:

The Hon'ble JUSTICE SUGATO MAJUMDAR

Date:11th August, 2025.

APPEARANCE:

Mr. Mainak Bose, Sr. Adv.

Mr. Sabyasachi Sen, Adv.

...for the plaintiff

Mr. Rajarshi Dutta, Adv.

Mr. Avijit Dey, Adv.

...for the defendant no. 1

Mr. Sakya Sen, Sr. Adv.
Mr. Avirup Chatterjee, Adv.
Mr. Rishov Das, Adv.
...for def. no. 2.

The Court:- In both the suits similar applications are filed, both of which are numbered as GA No. 3 of 2024. The contents of the applications are the same, both being applications praying for rejection of the corresponding plaints. Accordingly, the applications were heard together and disposed of by this common order.

Both the applications are filed on behalf of the defendant no. 2 praying for dismissal of the suit and/or rejection of the plaints.

Sum and substance of the pleading is that the instant suit has been instituted by the plaintiff primarily for a declaration that the lease deed between the defendant no. 1 and the petitioner herein is not determinable and, consequently, the right, title and interest of the plaintiff over the suit property is not determinable. A further declaration is being sought that the defendants including the present petitioner having right, title and interest to create any right in respect of any third party in any part or portion of the property. It is contended that previously CS 138 of 2013 was filed by the plaintiff claiming identical relief as that of the present suit. A subsequent suit being Title Suit No. 174 of 2015 was also filed by the plaintiff with identical reliefs. Both the suits were withdrawn without any liberty to file a fresh suit for the self-same subject-matter of plaint. It is further contended that there is no disclosed

cause of action in the present suit. On the aforesaid grounds, it is pleaded that the complaints should be rejected.

The parties exchanged their affidavits.

The learned Counsel for the defendant no. 1 argued in the line of pleading that the principal reliefs claimed in the prior suit being CS No. 138 of 2013 are similar to prayers (a), (b) and (c) of the instant suits. Similarly, the relief claimed in prayers (b) and (c) of TS No. 1741 of 2015 are exactly similar to prayers (a) and (c) of the instant suits. While withdrawing the previous suits, liberty to file a fresh suit were not taken in both the occasions which warrants dismissal of the suits and/or rejection of the complaints.

Learned Counsel for the defendant argued that for application of the bar under Order 23 Rules 1 and 41(4) of the Code of Civil Procedure, identity of the subject matter of the suits is essential and not the cause of action; even though there were different cause of actions in all the three suits, all of them were based on the same subject matter, namely the nature of the right created under the lease deed and whether the same is determinable and, consequently, the right of the plaintiff as a transferee with the defendant no. 1. Learned Counsel referred to **H.N. Jagannath & Ors. Vs. State of Karnataka & Ors. [(2018) 11 SCC 104]**.

Learned Counsel for the plaintiff argued, on the other hand, that the plaintiff withdrawn both the suits under specific circumstances and none of the issues raised in either of the suits were considered or decided on merit. It is further submitted

that cause of action of the instant suit arose in October, 2024 by subsequent act or omission of the defendants. In view of that, it is clear that cause of action in both the suits are not the same. Learned Counsel for the plaintiff referred to **Vallabh Das vs. Dr. Madan Lal & Ors.[1970 (1) SCC 761]** to substantiate his argument that suits have different cause of actions though the same subject matter, by itself, do not offend the provision of Order XXIII Rule 1 of the Code of Civil Procedure, 1908.

I have heard the rival submissions.

It was canvassed by the defendant that the word “subject matter” used in Order XXIII Rule 1 is different and distinct from the concept of cause of action and it was also canvassed that the subject matter is the same in all the suits. Although relied upon **H.N.Jagannath case (supra)**, the same was decided on different factual arrays. In **Vallabh Das’s case (supra)**, it was specifically observed that the expression “subject matter” is not defined in the Civil Procedure Code which reads as follows:

“The expression “subject-matter” is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said, that the subject-matter of the second suit is the same as that in the previous suit.”

Subsequently, in **N.R.Narayanswamy vs. B.Fancis Jagan [(2001) 6 SCC 473]** the Supreme Court of India observed that Order 23 Rule 1(4)(d) precludes the plaintiff from instituting any fresh suit in respect of such subject matter or such part of the plaint which the plaintiff has withdrawn. In a suit for eviction of a tenant under the Rent Act on the ground of bona fide requirement, even though the premises remain the same, the subject matter which is the cause of action may be different. The Bench referred to the decision and specific observation of the Supreme Court of India in **Vallabh Das's case (supra)** and reiterated the same interpretation. It is clear from the aforesaid decisions that the word “subject matter” refers to cause of action and not merely the physical property itself.

There is no cavil that while considering an application for rejection of the plaint, periphery of the plaint should not be transgressed. In other words, prima facie reading of the plaint is the only exercise to be done to decide on the issue.

In the instant case, the suit is based on a subsequent cause of action which arose subsequent to withdrawal of earlier suits. Veracity of such claim or such pleading can only be decided on appreciation of evidence after trial. However, at this stage, it is manifest from a plain reading of the plaint that the suit is based on a subsequent cause of action which arose on 30th October, 2024 when the plaintiff came to learn that the defendant no. 2 was proposing to construct a multi-storied building in the subject property including the portion in which the plaintiff is in occupation as lessee.

In view of the foregoing discussions, this Court is of the opinion and conclusion that the issue of cause of action whether barred or not cannot be decided at this stage without aid of evidence. Prima facie, the plaint discloses the subsequent cause of action. Therefore, the instant applications for rejection of the plaint is not tenable. Accordingly, the applications are disposed of.

Fix on 09/09/2025 for hearing of GA No. 1 of 2024.

(SUGATO MAJUMDAR, J.)

S.Chandra