IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 4717 of 2016
Krishna Dutta and Another
Vs.
Sri Salil Kundu and others

For the petitioners :Mr. Purnasish Gupta, Adv.
Mr. Jayanta Kumar Mukhopadhyay, Adv.

For the Opposite Parties :Mr. Subhadeep Banerjee, Adv.
Ms. Puja Somkar, Adv.

Heard On :04.09.2024, 11.09.2024,
30.09.2024

Judgement On :22.11.2024

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred under Article 227 of the Constitution of India challenging the Order being no. 16 dated 01.09.2016 passed by Ld. Civil Judge

Junior Division, 6th Court, Howrah in connection with Title Suit No. 1615 of 2015 wherein Ld. Judge was pleased to dismiss the application of the defendants/petitioner herein made under Order 7 Rule 11 of the Code of Civil Procedure (for short CPC).

Background in brief:-

2. The plaintiffs/ Opposite parties herein filed a suit for declaration, permanent injunction against the defendants/petitioners herein under the facts and circumstances set forth in the plaint. The case made out by the plaintiffs in the said suit is as follows:-

At the material point of time Bijay Krishna Kundu/predecessor in interest of the opposite parties herein/ businessman purchased all that piece and parcel of land with structure measuring 3 katha 33 sq ft situated at C.S. Dag No. 592 part, Khatian no. 819, 821, 822 and 823 corresponding to 592, L.R. Khatian no. 2202, 2250 and 2299 situated at Mouza Sawanpur, J.L. no. 2, P.S. formerly Jagacha, presently Dasnagar, District: Howrah in the name of his full blood brother Sri Basudev Kundu/ predecessor in interest of the petitioners herein.

3. Basudev Kundu, during his life time all along used to reside at village Sonamui, Mouza and P.S. Amta, District Howrah, having no connection with the suit land. After purchase of the said land, Bijay Krishna Kundu initially constructed structures on the vacant plot of land. Subsequently, the property was further developed by Bijay Krishna Kundu and his successors out of their own right and adverse to the interest of all concerned without any objection and interference by the predecessor in interest of the petitioners herein in any manner whatsoever, thereby treating the property as their own property.

4. Subsequently the name of Subrata Kundu/opposite party no. 2 herein was duly recorded in khatian no. as well as R.S. Record of Right which was duly attested by the revenue office and finally published in the record of rights. In the L.R. record of rights, the property was recorded in the name of Sri Salil Kumar Kundu/ opposite party no. 1 herein, Sri Samir Kumar Kundu, Sri Subrata Kundu/ opposite party no. 2 and Anupam Kundu. In the Corporation record also, the name of the plaintiffs/ predecessor in interest of the plaintiff / opposite parties herein have been recorded and the plaintiffs and the predecessor in interest of the plaintiffs paid the settlement and

corporation taxes from time to time. The electricity was also obtained in the name of opposite parties and the electricity bill was duly paid against consumption charges from time to time. Basudev Kundu/predecessor in interest of the petitioners herein during his life time never objected, obstructed and interfered with lawful exercise of right and possession in respect of the suit property by Bijay Krishna Kundu and his sons. He died leaving behind him his legal heirs who have no connection with the suit property. All the plaintiffs have their ration card and voter's card in respect of the suit property.

5. Therefore, due to long continuous, exclusive and uninterrupted enjoyment of the suit property and out of right of the plaintiff and adverse to the right of all concerned a very good and indivisible title have been accrued in favour of the plaintiffs and as a sequel the petitioners herein have extinguished their all and whatsoever right, title and interest, possession for non user and non assertion of their right and being out of possession for more than the statutory period of 12 years.

Argument Advanced:-

6. Ld. Counsel, Mr. Jayanta Kumar Mukhopadhyay appearing on behalf of the petitioners by referring to paragraph no. 2 of

the plaint has submitted that the opposite parties herein claimed themselves as purchaser which means real or true owner who paid the consideration price. Therefore, according to the plaintiffs therein the petitioners herein are Benamdar. Hence, this factual matrix will squarely attract the provision of Sections 4, 24 & 45 of the Prohibition of the Benami Property Transaction Act, 1988 (for short Act of 1988).

7. Mr. Mukhopadhyay by referring to the averments of the plaint has tried to make this Court understand that the opposite parties on one hand are claiming ownership on the basis of purchase through own money. But, on the other hand they are claiming acquisition of title on the basis of adverse possession which is absolutely impossible in common parlance.

8. In this regard, Mr. Mukhopadhyay has relied on the following cases which deal with the basic intricacies and nitty-gritty of the concept of adverse possession :-

- ***Karnataka Board of Wakf vs. Government of India reported in SCC 2004 (10) 774***
- ***T. Anjanappa vs. Somalingappa reported in SCC 2006 (j) 570***

- ***Chatti Konati Rao vs. Palle Venkata Subba Rao reported in AIR (SC) 2011 (0) 1480***

9. Per contra, Ld. Counsel, Mr. Subhadeep Banerjee, appearing on behalf of the opposite parties has mainly canvassed his argument on the ground that according to the averments of the plaint it is not the case of the opposite parties herein that there was any claim for right, title & interest over the subject property through Benami transaction. Therefore, Mr. Banerjee has submitted that the provision of the Act of 1988 have no application in the case at hand.

Analysis:

10. After adhering to the rival contentions of the parties, I am of the humble view that this Court has to figure out the following Three issues:-

Issues

i. Conditions of Order 7 Rule 11 of the CPC.

ii. Whether provision of Section 4 of the Act of 1988 is applicable in the case at hand.

iii. Whether adverse possession over the suit property, claimed by the plaintiffs/petitioners herein is barred by any law or

any of the conditions for satisfying the claim of adverse possession.

Issue no. i-

11. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. Rule 11 of Order VII lays down an independent remedy which is made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint **"shall"** be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint. It is akin to that of the power available to High Court under Section 482 of the Code of Criminal Procedure in quashing criminal proceeding. Order VII, Rule 11(d) of the Code has limited application.

12. The Courts must remember that if on a meaningful – not formal – reading of the plaint, it is found to be manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 of the C.P.C., taking care to see that the ground mentioned therein is fulfilled. The Courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and should exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. But the Court cannot conduct a rowing enquiry to find out whether the averments made in the plaint claiming how the suit was in time, are true or false.

13. It is well settled that the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. It is also well settled that the Court is called upon to exercise jurisdiction to reject the plaint under Order 7 Rule 11 of CPC, only on the averments made in the plaint and documents filed along with the plaint, which form part thereof, alone would be taken into consideration and the Court cannot consider the defence plea or materials submitted by the defendant for the purpose of rejecting the plaint.

14. Therefore, this Court also cannot go beyond the averments of the plaint.

Issue no. ii-

15. Mr. Mukhopadhyay, on behalf of the petitioners has submitted that admittedly, as it appears from the plaint, the subject property stood in the name of predecessor in interest of the petitioners which was alleged to have been purchased by the predecessor in interest of the opposite parties. Mr. Mukhopadhyay, thereafter, referred to Section 4 of the Act of 1988 which runs as follows:-

> *"4. Prohibition of the right to recover property held benami-*
>
> *(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*
>
> *(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."*

16. On a meaningful reading of the plaint it is manifestly clear that plaintiffs/opposite parties herein never claimed any right, title and interest over the suit property prying into the

track of alleged deed. Therefore, provision of Section 4 has hardly any role to play in this suit. That apart, it is nobodies case that the proceeding under Section 24 of the Act of 1988 has ever been initiated at the instance of the concerned initiating officer.

Issue no. iii-

17. In the case at hand, plaintiffs/opposite parties herein prays for declaration of title over the suit property through adverse possession which has to be fortified by the following conditions in accordance to the provisions of Article 64 & 65 of the Limitation Act:-

- Actual possession: The claimant must physically occupy the land, using it as an owner would, such as by cultivating, building, or residing on it.
- Open and notorious use: Possession must be visible and obvious to anyone who might question the ownership of the land.
- Exclusive control: The claimant must exert exclusive control over the property, excluding the true owner and others from its use.

- Continuous use for a statutory period: Adverse possession requires continuous occupation of the land for a minimum of 12 years.
- Hostile intent: The possession must be hostile, meaning the claimant occupies the land without the owner's permission and intends to assert ownership rights.

18. After meaningful perusal of the plaint, some material intricacies pertaining to the dispute at hand, has come to the notice of this Court. In paragraph no. 2 of the plaint the plaintiffs/opposite parties herein have not disputed that the property stands in the name of the predecessor in interest of the petitioners herein as land owner.

19. However, the opposite parties herein have claimed their right, title and interest over the suit property through adverse possession. After delving into the details of the plaint especially paragraphs no. 5, 7 & 14, the plaintiffs/opposite parties herein have furnished details regarding their possession over the subject property. Now coming to paragraph no. 9 it has been manifestly alleged by the opposite parties herein that the predecessor in interest of the petitioners herein never objected/obstructed/ interfered with the possession of the

opposite parties herein over the suit property during his entire lifetime and he had no connection at all with the said property.

20. Therefore, in my humble view, the main contentious issue is whether the opposite parties herein adversely possessed the subject property and fulfilled the material requirements for right, title & interest over the suit property. But, this issue is a mixed question of law and fact which can only be properly adjudicated in course of trial after catering to all the attending facts and circumstances.

21. Therefore, I do not find any reason to defer with the observation of the Ld. Trial Judge made in the impugned order dated 01.09.2016.

22. As a sequel, the instant Civil Revision application being no. C.O. 4717of 2016 stands dismissed.

23. Interim order, if there be any, stands vacated.

24. Connected applications, if there be, also stand disposed of accordingly.

25. All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.

26. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]