

2025 SCC OnLine Cal 7510

In the High Court of Calcutta
(BEFORE CHAITALI CHATTERJEE DAS, J.)

Wilman Associates India Pvt. Ltd. and Another

Versus

Susanta Roy Kayal and Others

CO 1135 of 2014

Decided on September 9, 2025, [Last heard on : 24.07.2025]

Advocates who appeared in this case:

For the Petitioners : Mr. Sounak Sengupta, Adv.

Mr. Arnab Dutt, Adv.

Mrs. Labani Dey, Adv.

For the Respondents : Mr. N.G. Sarkar, Adv.

Mr. Dev Ranjan Das, Adv.

Mr. Partha Mukherjee, Adv.

Mr. Sujan Roy, Adv.

The Judgment of the Court was delivered by

CHAITALI CHATTERJEE DAS, J.:— This application under Article 227 of the Constitution of India has been filed against an order dated January 2nd, 2014 passed by the Learned Civil Judge, Junior Division, 6th Court at Alipore in Tittle suit no 26 of 2007 whereby the petition filed under order 7 Rule 11 CPC was rejected on contest.

2. Shorn of any details the case of the petitioner is as follows:—

- a) Original suit being title suit No. 26 of 2007 was filed by the plaintiffs/Opposite Party no 1, 2, and 3 against the defendant Opposite Party No. 4 and 5 for declaration and injunction describing themselves as Bargadars on the suit land. The said suit was withdrawn by the plaintiff themselves and the Learned Court by order No. 19 dated January 14, 2008 recorded the grounds of dismissal of the suit stating that the disputes have been settled between the parties out of Court, hence the suit be and the same is dismissed for non-prosecution as prayed for.
- b) The petitioner No. 1 Company purchased the suit property by virtue of two registered deeds of conveyance both dated 12th May, 2008 and at the said material point of time the suit was not there and was withdrawn. Prior to purchase the petitioner No. 1 delivered vacant possession of the said land on October 31, 2007 accordingly to possession certificates were also given to him

which he has annexed with the present petition. After such purchase the Opposite Party Nos 1 to 3/plaintiffs started claiming that they are the Bargadars in respect of a portion of the purchase land of the petitioners being the suit land herein. Accordingly a proceeding started before the Learned Land Tribunal under case No. OA 1039/2011 (LRTT) and obtain an order whereby directed the B.L. and L.R.O to dispose of the pending case within two months. By virtue of a final order said B.L and L.R.O held that recording of Bargadars being wrong and thereby struck of and corrected the names of the plaintiffs from the record of rights and also the said land was mutated in the name of the petitioner No. 1 as the owner in respect of entire Dag by putting new L.R Khatian No. as 2547.

- c) The petitioner received summons of the suit which transpire that O.P. No 1 to 3/plaintiffs surreptitiously in collusion with the original defendant restored the suit which was dismissed ex-parte and included the petitioner as defendant No 3 and 4 therein and accordingly sent such summons. The plaintiffs claimed in the suit that they are the recorded Bargadar in respect of suit land is there father being "Bhagchasi" where in possession of the suit land started to cultivate from 1376. B.S. and used to deliver usufruct to the original owner Ram Samanta, Krishna Kali Smanata, Kali Samanmta, Sasanka Samanta but did not hold any Bargas certificate. Accordingly the plaintiffs claimed decree for declaration that the plaintiffs have every right to cultivate the suit land without any interference of the defendants as recorded Bargadars and also a decree for injunction against the defendants not to disturb the plaintiffs possession at the time of cultivation or harvesting.
- d) Immediately on receiving the summons the petitioner entered appearance and filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that the dispute relates to "Bhagchasi" and "Barga" and the Court has no jurisdiction to try such dispute. Further point taken on the ground of mis-joinder and non-joinder of parties the suit is not maintainable and also is bad by the principles of Res Judicata.
- e) The said application was heard by the Learned Court and vide an order dated January 2nd, 2014 the said application was rejected.

Being aggrieved thereby this revisional has been filed.

3. The bone of contention to challenge the order is that the Civil Court does not have any jurisdiction to entertain the instant dispute and is specifically barred under Section 21 (i) of the West Bengal Land Reforms Act, 1955. In this regard the Learned Advocate has been relied

upon a decision reported in, *Nanda Gopal Pramanik v. Kabir Kayan*¹ and also *Azizar Rahaman v. State of West Bengal*² reported in. It is further argued that the claim of the Opposite Party has been dismissed and the Opposite Party is not a Bargadar in this regard as the same has been held by the concerned Authority, B.L. and L.R.O. Bishnupur 1 from time to time by order dated 13th February, 2012 and it was also held by the Authority that the Opposite Party has no right over the said property and is not a Bargadar.

4. Further argument advanced by the Learned Advocate representing the petitioner that the suit was previously compromised and therefore this suit is not maintainable which is filed on the self-same cause of action without obtaining any leave to file a fresh proceeding while withdrawing the previous suit which was an unconditional withdrawal. In this regard relied upon a decision reported in *Ramesh chandra Sankla v. Bikram Cement*³ and another judgment reported in *Bakhtawar Singh v. Sadakaur*⁴. Accordingly prays for setting aside such order passed by the Learned Court refusing the prayer made by the petitioner under Order 7 Rule 11 CPC.

5. Per contra the submission on behalf of the respondent as placed before this Court is by filing written notes of argument manifest that the terms and condition of said MOU dated 31.10.2007 was breached as three cheques amounting Rs. 13,50,000/- was dishonoured and accordingly an application was filed under Section 151 CPC to restore the suit which was restored and the petitioner/company was made party. Therefore the revisionists had full knowledge but they did not raise objection to the said order of restoration. After that the application under Order 7 Rule 11 was filed suppressing the MOU.

6. It is further their case that the right of Bargadarship of the respondent/plaintiffs is still now sub-judice before W.B.L.R.T.T and is fixed for hearing in the month of January 28, 2026. The instant Title suit was filed by the plaintiffs/respondents before the Court of 6th Civil Judge Junior Division at Alipore for a decree for declaration and permanent injunction for right to cultivate by themselves on the suit land without any interference by the defendants in terms of protection of their civil rights to cultivate for livelihood as Bargadars. The Bargadar certificate issued on them on 22nd July, 93 is still in force. It is further argued that on 21st January, 2009 vide memo no 01/060 the office of the B.L. & L.R.O Bishnupore 1 at Amtala, South 24 Parganas issued a notice to the Officer-in-charge, Bishnupore Police Station requesting him take administrative steps in favour of the plaintiff/respondents cultivation over the suit plot from any disturbance or breach of peace and tranquillity.

7. The Learned Court while refusing the prayer of the present petitioner filed under Order 7 Rule 11 CPC observed inter alia that the dispute cannot be settled at this stage without going into the trial of the suit. On the plain reading of the plaint it transpires that the suit is not barred by any provision of law and the petition filed by the defendants does not make any of the provisions enshrined in Order 7 Rule 11 CPC. It is further submitted that the Title Suit No 26 of 2007 was restored by the Learned Court in view of the right of the plaintiff respondents to cultivate in terms of Bargadar which was going to be curtailed by the present petitioner who once admitted their right to cultivate the suit land as their only livelihood. That apart in the Memorandum of understanding dated 21st October, 2007 a sum of considerable amount of Rs. 17,00,000 was undertaken by the petitioner No. 3 to pay and awarded to the plaintiff/respondent herein for purchasing an alternative land for their livelihood and for such consideration and settlement the suit was withdrawn which was noted in terms of said "MOU" dated 31.10.2007.

8. Further argument advanced that as per Section 9 of CPC Civil Court has jurisdiction to try any civil dispute unless it is barred by law. As per Section 17 to 21 of the West Bengal Land Reforms Act, 1955 Civil Court is not entertain any suit as the declaration regarding Bargadarship but that provision cannot be applied in straight jacket formula since the plaintiffs were cultivating the suit land for many years and acquires a Civil Rights. The suit for declaration was filed by the plaintiff for protection of the Civil Right of the plaintiffs so Civil Court has not bar to try the suit. Accordingly Reliance is placed in the decision reported in *Haji Mahabub Hossain v. Biswanath Nandy*⁵ and *Smt. Bismilla v. Ganeswar Prasad*⁶.

9. Furthermore the objection of Res judicata cannot be taken to bar the suit under Order 7, Rule 11 CPC as the instant suit restoring the earlier suit does not violate any of the following principles as laid down under Section 11 of CPC as well as observation made the Hon'ble Supreme Court in *Srihari Hanumandas Tofala v. Hemant vithal Kamat*⁷ Which has been also cited in the recent decision passed by the Hon'ble Supreme Court in civil appeal No. 7743 of 2025 arising out of SLP (C) No. 18230 of 2025 Diary No. 11882 of 2021.

10. Heard the submission of both the Learned Advocates. At the outset it is seen that the present O.P. No. 1 has expired and pursuant to the direction of this Court on 1st of February 2022 on the date of O.P. No 1 and 2 the legal heirs were substituted and accordingly the cause title was modified. Original suit being title suit was filed on 26 of 2007 by O.P. No 1, 2 & 3 against the defendant/Opposite Party No. 4 and 5 for declaration and injunction describing themselves as Bargadar of the

suit land. The said suit being withdrawn by an order dated 14th January, 2008 it was recorded that disputes have been settled between the parties out of Court and the suit was dismissed for non-prosecution.

11. Subsequently the O.P. No. 1, 2 and 3 restored the suit and included the petitioners as defendant No 3 and 4 therein and the petitioners came to learn the same after receiving the summon of the said suit. According to the plaintiffs in the suit they are the recorded Bargadars in respect of the suit land as their father was "Bhagchasi" were in possession of the suit land to cultivate the same since 1376 B.S. The Owner Ram Samanta, Krishna Kali Samamta, Kali Samanta, Sasanka Samanta did not hold any Barga certificate though the plaintiffs used to deliver usufruct to them. The plaintiffs stepped only shoes of their father and continue to cultivate the suit and obtained Barga Certificate by Order dated 7th July, 1993 from the concerned B.L. and L.R.O. on proper investigation and enquiry but their names have not recorded in L.R. Khatian. It is the case of the plaintiff being the O.P. no 1, 2 and 3 that taking advantage of said unrevised ROR the present petitioners started disturbing with the possession of the suit land and accordingly the plaintiffs filed the suit for decree for declaration. The present petitioner on appearance in the said suit filed an application under Order 7 and Rule 11 for rejection of the plaint and the grounds taken for such rejection was that the dispute relates Bhagchasi and Barga and the Civil Court has no jurisdiction to try and entertain such dispute.

12. The Learned Trial Court while disposing of the case observed that the suit was filed for declaration and permanent injunction but nowhere in the plaint the plaintiff prayed for declaring them to be the Bargadars in respect of such suit property. It was the defendant who alleged that the plaintiffs are not recorded Bhargadars of the suit property it was therefore observed by the Court that the issue cannot be decided at the stage of hearing of Order 7 Rule 11 without entering into the trial of the suit and thereby observed that suit barred by any provision of law.

13. In this regard the decision relied upon by the petitioner in *Nanda Gopal Pramanik v. Kabir Kayan* and also *Azizar Rahaman v. State of West Bengal* (supra) are required to be look into. On perusal of the said decision of *Nanda Gopal Pramanik* of the co-ordinate bench of this Court it can be gathered that in that case the suit was filed for declaration being decree of permanent injunction restraining the O.P. from a peaceful possession of the petitioner of the suit. An application for temporary injunction was also filed which was dismissed on the ground that a cloud has been caused over the title of the petitioner in respect of the property in question and in view of the embargo created under the Land Reforms Act, 1955 debarring the jurisdiction of the Civil Court

for entertaining such suit, and it was observed that "Since the claim of the petitioner raised on the strength of the surrender and/or abandonment of right to cultivate by a recorded Bargadar on executing a Nadabipatra and the possession is sought to be protected on the basis thereof, the moment an objection is put forth touching the surrender and/or abandonment of right to cultivate by a recorded Bargadar, the Court loses its jurisdiction to decide whether such surrender was effected or not the substantive Section ousted the jurisdiction of the Civil Court comes into play". The Learned Single Bench further observed that even the decision was categorically described by the Ops who laid their claim to be recorded as Bargadars much before the institution of the suit by the petitioner the Court while protecting the decision must ascertain in whose possession the property in question is, any blanker order without ascertaining the possession is capable of being circumvent by a scrupulous litigant and revisional application was dismissed.

14. The facts of the case of *Azizar Rahaman* a dispute within the meaning of the Section 18(1) was raised and for deciding a question arose as to whether the concerned party was a bargadar or not, the Learned Single Bench observed that the provisions of S. 18(2) have undergone changes after the amendment Act in 1974 by insertion of the word 'otherwise' and the officer empowered under Section 18(1) can determine the status of a bargadar even if the parties have not raised any dispute within the meaning of Section 18(1) of the Land Reforms Act and the specific application was filed before the court which was decided by the officer was not interfered with.

15. On the other hand on perusal of the decision of *Smt. Bismilla* (Supra) it is seen that "it is settled law that the execution of the jurisdiction of the civil Court is not to be readily inferred, such execution must either be explicitly expressed or clearly implied. The provision of law which seeks to ousted the jurisdiction of Civil Court needs to be strenuously construed".

16. In the light of the above the plaint of tile suit 26 of 2007 is perused. It is clear that in this suit the prayer was for declaration that plaintiffs have every right to cultivate the suit land without interference of the defendants as recorded Bargadars and further for a direction upon the B.L & L.R.O to record the name of the plaintiffs in L.R Khatian Records as per Barga Certificate. So the primary objection raised against the application filed under Order VII Rule 11 CPC in the written objection was that they prayed for not to disturb the possession of the plaintiffs by the defendants but did not averment regarding their further prayer for a direction upon the B.L & L.R.O to record the name of the plaintiffs in L.R Khatian Records as per Barga Certificate under the jurisdiction of the civil court. The plaint case rests on the fact that their

father was a bhagchasi and was in possession since 1376 B.S and used to deliver the usufructs to the owners who were Samanta s. Admitted fact that they did not hold any barga certificate and that they faced hindrances to continue with their bhagchasi by the substituted defendants. As a result of this the present plaintiff applied before the B.L. and L.R.O to record their names as Bargadars and the office concerned after proper investigation and enquiry issued Bargadar certificate in the name of present plaintiffs by order dated 7.7.93.

17. Therefore from the above factual matrix it is undisputed that the declaration has been prayed to have the right to cultivate emanated from the right of Brgadar since a certificate was recorded in their favour and this certificate was later rejected and subsequent recorded in the name of the revisionist/Company and thereby prayed for a direction to record their name in the L.R Khatian. Hence it is clear and can have no room for doubt that the dispute pertains to the very root of the adjudication about having the right to cultivate the land being a Barfgadar or a bhagchasi and is hit by the specific embargo made under Section 21(1) to the Land reforms Act which prohibits the Civil Court from entertaining any dispute of such nature. The MOU entered into between the petitioner and the predecessor of the present respondent and Respondent No 1 Susanta Kayal were signed by both the parties where it was agreed that they will complete the deed of conveyance after the disposal of T.S no. 26 od 2007 pending before the Learned Civil Judge 6th court at Alipore Court as the first party/present respondents shall withdraw the pending suits and vide letter dated 1st January communicated to the present petitioner about their undertaking and promise to complete their part of obligation. On January 2008 the plaintiffs by way of an affidavit filed an application to withdraw the said suit and claimed themselves as bargadar and the dispute arose between the parties over the possession of the suit land which has been amicably settled and the plaintiff intended to withdraw the suit without any interim relief. On 31.1.2007 they handed over the peaceful possession of the suit land which also contains the schedule of the said land and the record of right accordingly recorded the name of the petitioner company.

18. No document is shown that before such restoration of suit any communication was made with the petitioner. Furthermore the B.L& L.R.O vide order dated 19.7.11 and on 13.2.12 clearly observed that the predecessor of the present Respondents and Respondent no. 1 applied before the B.L & L.R.O for recording their names as bargadar under respondent no. 9 that is Subol Chandra kayal and a bhag chasi case no 39/92 was initiated and by an order dated 24.8.1992 the same was disposed of by holding that they were never bargadar.

19. The objection to this fact has been specifically raised and the very purpose of filing the above suit pertain to the dispute about the bargadarship between the parties which were amicably settled and the name of the petitioner company was recorded after the suit was withdrawn for non-prosecution. The Respondent on above development cannot merely pursue with their previous prayer when the facts narrated in the plaint were absolutely changed. In this regard the decision relied upon on behalf of the petitioner is look into. In the case of *Ramesh Chandra Sankla* (supra) it was observed in;

'para 53 that a question whether a petition is barred by res judicata or under Rue 4 of Order 23 of the code is not a Pure question of law. It is a question of law and fact. In absence of pleadings and necessary materials in support of such plea, petitions cannot be dismissed on the bald assertion by a party that they were not maintainable'.

After discussing a number of cases on this issue in paragraph 61 observed

'61. From the above case law, it is clear that it is open to the petitioner to withdraw a petition filed by him. Normally, a court of law would not prevent him from withdrawing his petition. But if such withdrawal is without the leave of the court, it would mean that the petitioner is not interested in prosecuting or continuing the proceedings and he abandones his claim. In such case obviously public policy requires that he should not start afresh round of litigation and the court will not allow him to reagitate the claim which he himself had given up earlier.'

20. The decision of *Bakhtawar Singh* (supra) the point raised was relating to limitation under Section 14 of the limitation Act when the earlier suit was withdrawn with the leave to file afresh in accordance with the provision s contained in clause 3 of Order 23 CPC and is not applicable in this case. The Hon'ble Supreme Court in the case of *Pandurangan v. T. Jayarama Chettiar* noted the decision reported in *Srihari Hanumandas Totala v. Hemant Vithal Kamat*⁸ where in paragraph 25.4 held;

'25.4. Since an adjudication of the plea of resjudicata requires consideration of the pleadings, issues, and decision in the 'previous suit" such a plea will be beyond the scope of Order 7 Rule 11 (d) where only the statements in the plaint will have to be perused.' But in this case an amicable settlement entered into and acted upon on the basis of which the suit was withdrawn and duly communicated'.

Therefore no question of fraud being practised or taking any step beyond their knowledge can be raised. That apart no leave was obtained to file afresh after it was withdrawn and it was restored vide

an application under section 151 of CPC without serving any intimation to this petitioner.

However considering the point being a mixed question of law and fact this court is not entering upon the said issue since the first objection raised regarding maintainability on the point being barred by the law.

21. However without entering into other points raised regarding maintainability since the dispute is out and out a dispute touching the issue of declaring the rights of bhagchasi and or Bargadar it is to be adjudicated by the appropriate authority and is clearly prohibited to be adjudicated by the civil court under section 21(1) of West Bengal Land Reforms Act, 1955 to entertain such dispute. Order 7 Rule 11(d) of Code of Civil Procedure provides where the suit appears from the statement in the plaint to be barred by any law.

22. Therefore this Court is unable to concur with the observation of the Learned Court in view of the above factual matrix and the law laid down in this regard and the same is liable to be set aside.

23. Accordingly this revisional application stands allowed.

24. The order passed by the learned court of civil judge junior division 6th Court at Alipore on 2.1.2014 is hereby set aside.

25. No order as to costs.

26. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

¹ 2010 SCC OnLine Cal 2008

² 1980 SCC OnLine Cal 180

³ (2008) 14 SCC 58

⁴ (1996) 11 SCC 167

⁵ AIR 1971 Cal 381

⁶ (1990) 1 SCC 207 : AIR 1990 SC 540

⁷ (2021) 9 SCC 99

⁸ (2021) 9 SCC 99