

56-30³/2011

G. A. No. 2516 of 2010

C. S. No. 41 of 2010

In the High Court at Calcutta

Ordinary Original Civil Jurisdiction



GLOSTER JUTE MILLS LIMITED, a Company within the meaning of the Companies Act, 1956 having its registered office at 21, Strand Road, Kolkata - 700 001 within the said jurisdiction ;

..... Plaintiff

Versus

1. **HOOGLY MILLS COMPANY LIMITED**, a Company within the meaning of the Companies Act, 1956 and carrying on business inter alia at 10, Clive Row, Kolkata - 700 001 within the said jurisdiction ;

2. **BOWREAH JUTE MILLS**

PRIVATE LIMITED, a Company

~~within the meaning the~~

Companies Act, 1956 having its

registered office at 14A, Stephen

House, 56E, Hemanta Basu

Sarani, Kolkiata - 700 001

within the said jurisdiction ;

..... Defendants

3. **FORT GLOSTER**

INDUSTRIES LIMITED, a

Company within the meaning of

the Companies Act, 1956 and

carrying on business inter alia

at 31, Jawaharlal Nehru Road,

Kolkata - 700 016, within the

said jurisdiction ;

.... Proforma Defendant

GA NO.2516 OF 2010
CS No. 41 of 2010
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

GLOSTER JUTE MILLS LIMITED
Versus
HOOGHLY MILLS COMPANY LIMITED & ORS.

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE
Date : 4th March, 2011.

Mr.Jishnu Saha, Adv.,
Mr.Sakya Sen, Adv.,
Mr.P.K. Jhunjhunwala, Adv.,
for the plaintiff.

Mr.S.N. Mukherjee, Sr. Adv.,
Mr.Tilak Bose, Sr. Adv.,
Mr.Sanjay Bose, Adv.,
Ms.Tapati Chatterjee, Adv.,
for the defendant no.2.

The Court : This is the second defendant's application for rejection of the plaint and/or dismissal of the suit on the ground that this is a suit for land.

The third defendant apparently entered into an agreement with the first defendant in the year 1988 by which a jute mill and the land relating thereto outside jurisdiction was

agreed to be transferred in favour of the first defendant. It is not in dispute that it was only an agreement for sale and that the conveyance in respect of the transaction was not completed. The first defendant was, however, put into possession of such land which has been loosely described as the North Mill in the plaint. Several years down the line, the first defendant entered into an agreement with the second defendant and the second defendant was made over possession of such North Mill.

The claim in the suit is that there was a de-merger of the third defendant company pursuant to which the plaintiff was entitled to the third defendant's interest in the North Mill. Consequently, the plaintiff claims that the plaintiff was entitled to the rights of the third defendant qua the first defendant under the 1988 agreement. The first relief claimed in the plaint is for cancellation of the agreement of January 12, 2009 between the first and second defendants. In addition to the assertion of the plaintiff's rights relating to the North Mill, the plaintiff has claimed that the plaintiff has what has been described as a "unentrenched right" in respect of the supply of water from the river Hooghly through pipes around the North Mill. The plaintiff

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has also claimed certain easement rights. The second and third reliefs claimed in the suit are in furtherance of the plaintiff's claim to receive uninterrupted supply of water.

The fourth relief is in the sum of Rs.83 lakh - odd on account of alleged electricity dues that the plaintiff claims to be entitled to receive from the second defendant. Apparently, the second defendant has filed a suit for specific performance of its agreement with the first defendant in which the plaintiff and the third defendant are also parties. The second defendant, as the plaintiff in such other suit, obtained an order which obliged the plaintiff herein to not disconnect the electricity supply to the North Mill for some time. The claim on account of electricity charges by the plaintiff herein is for such period that the second defendant enjoyed the electricity supply courtesy this plaintiff.

The second defendant says that the main object and the primary purpose of the suit is the plaintiff's assertion of its right, title and interest in respect of the North Mill and the land relating thereto which is admittedly outside jurisdiction. The second defendant contends that if it appears on a meaningful reading of the plaint that the

principal thrust of the suit is to assert any right in respect of an immovable property situated outside, the suit cannot any longer be continued in this Court. The second defendant, however, concedes that it is open to the plaintiff to abandon such of the reliefs which would make this a suit for land and continue with the other reliefs, if the plaintiff is so advised. The second defendant has relied on a judgment reported at 2007(4) SCC 343 that referred to a number of authorities beginning the celebrated *Moolji Jaitha* case.

The plaintiff is willing to abandon reliefs (b) and (c) claimed in the plaint but the plaintiff says that the first relief has nothing to do with any land. The plaintiff submits that the relief as to the cancellation of the agreement of January 11, 2009 is founded on the plaintiff's assertion that the document is an unstamped and unregistered writing. The plaintiff refers to the valuation of the suit that appears at paragraph 38 of the plaint. The plaintiff says that it is the money relief which is really at the heart of the claim and the three previous reliefs have been incidentally made.

Apart from the averments in the plaint, the second defendant has also referred to an order passed on March 15,

2009 on an earlier interlocutory application in this suit when the interlocutory Court found that this was a suit for land and declined the orders the plaintiff sought. On an appeal, the Division Bench found on April 19, 2010 that this was indeed a suit for land, though the point was left open to be considered at the final hearing of the interlocutory application in which the appeal arose. Such previous interlocutory application has been withdrawn by the plaintiff sometime in December, 2010.

The second defendant also points out another tell-tale sign which, according to the second defendant, appears at paragraph 37 of the plaint. The second defendant says that the plaintiff was aware that the suit would be perceived as a suit for land and had, accordingly, carried a line in paragraph 38 of the plaint that the reliefs claimed were in personam the suit was not, in fact, a suit for land.

Whatever may be said in the plaint and whatever denial may appear as to the nature of the suit, the test is in assessing the primary object of the suit.

For the plaintiff to be entitled to even assail the agreement of January 12, 2009 between the first and second defendants relating to the North Mill, the plaintiff has to

first demonstrate an interest in the subject-matter of that agreement. Since it is the undeniable position that the subject-matter of that agreement between the first and the second defendants is the right to North Mill, it is obvious that the plaintiff in assailing the agreement between the first and second defendants asserts some form of right or interest in North Mill. In so doing, the plaintiff has effectively made this a suit for land.

In addition, the plaintiff has claimed its entitlement to water from pipes running along the North Mill. The plaintiff has also claimed easement rights. On a meaningful reading of the plaint, it does not appear that the money claimed on account of alleged electricity dues is at the heart of the suit. The right that the plaintiff seeks to assert is in respect of North Mill.

Though the plaintiff could have abandoned the first three reliefs which make this a suit for land, the plaintiff has offered to abandon only the second and third reliefs. The first relief would, by itself, make this a suit for land since the plaintiff's right to challenge the agreement between the first and second defendants stems from the plaintiff's assertion of having a right in the North Mill.

The second defendant has also referred to an application under Section 11 of the Arbitration and Conciliation Act, 1996 that the plaintiff had carried by asserting that it was entitled to the benefit of the arbitration clause contained in 1988 agreement between the third defendant and the first defendant. The second defendant says that the arbitration Court did not accept the plaintiff's contention in such proceedings that the plaintiff was entitled to the North Mill consequent upon the demerger relating to the third defendant.

Without going into such aspect of the matter, since it is evident that the purpose of the suit is to try and establish the plaintiff's right or some form of interest in respect of the North Mill, which is admittedly situated outside the jurisdiction, and the plaintiff insists on continuing with the first relief, this is a suit for land which is incapable of being proceeded with in this Court.

Accordingly, GA No. 2516 of 2010 is allowed and CS No. 41 of 2010 is arrested as far as this Court is concerned. It will be open to the plaintiff to pursue the same claim before any other appropriate forum. The second defendant will also be entitled to costs assessed at 300 GM.

Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

sd/- Sanjib Banerjee, J.
(SANJIB BANERJEE, J.)

sd/snn.

CERTIFIED TO BE A TRUE COPY

Prabir Kumar Bep 20/03/11

Authorised under Section 76 of
the Indian Evidence Act, 1872
(Act-1 of 1872)

P-8
Sona Choudhary
20.3.11