



GAHC010226722016

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/471/2016

MANTU ROY
S/O LT. BIPAD BHANJAN ROY R/O A.T. ROAD, NEAR BADOL MISTANNA
BHANDAR, TINSUKIA TOWN, P.O. TINSUKIA, P.S. TINSUKIA DIST.
TINSUKIA, ASSAM

VERSUS

GOPAL CHAKRABARTY AND 6 ORS
S/O LT.NISHI KANTA CHAKRABARTY, R/O ANONDO PARA, DURGABARI,
TINSUKIA TOWN, P.O. TINSUKIA, P.S. TINSUKIA, DIST. TINSUKIA, ASSAM, -
786025

2:SRI PRABIR ROY

3:SRI SUJIT ROY

4:SRI UTTAM KUMAR ROY
PROFORMA RESPONDENT NOS. 2
3
and 4 ARE SONS OF LT. BIPAD BHANJAN ROY
R/O A. T. ROAD
NEAR BADOL MISTANNA BHANDAR TINSUKIA TOWN
P.O. TINSUKIA
P.S. TINSUKIA
DIST. TINSUKIA
ASSAM.

6:SRI KAMAKHYA PRASAD BERIWAL

S/O LT. HARIDWAR BERIWAL



DIKOM BAZAR P.O. DIKOM DIST. DIBRUGARH
ASSAM.

7:SMTI. SISHU CHAKRABORTY
W/O SRI GOPAL CHAKRABORTY

8:SRI KAJOL CHAKRABORTY
S/O SRI GOPAL CHAKRABORTY 7 AND 8 ARE BOTH RESIDENTS OF
ANANDAPARA DURGABARI
TINSUKIA TOWN
P.O. P.S. AND DIST. TINSUKIA
ASSAM

Advocate for the Petitioner : MR.S BANIK

Advocate for the Respondent : MRG JALANR

Linked Case : CRP/472/2016

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S/O S/O LT. BIPAD BHANJAN ROY
R/O A.T. ROAD
NEAR BADOL MISTANNA BHANDAR
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2:SRI PRABIR ROY



S/O LATE BIPAD BHANJAN ROY
R/O A.T. ROAD
NEAR BADOL MISTANNA BHANDAR
TINSUKIA TOWN
POST OFFICE- TINSUKIA
POLICE STATION-TINSUKIA
DISTRICT-TINSUKIA
ASSAM.

3:SRI SUJIT ROY
S/O LATE BIPAD BHANJAN ROY
R/O A.T. ROAD
NEAR BADOL MISTANNA BHANDAR
TINSUKIA TOWN
POST OFFICE- TINSUKIA
POLICE STATION-TINSUKIA
DISTRICT-TINSUKIA
ASSAM.

4:SRI UTTAM KUMAR ROY
S/O LATE BIPAD BHANJAN ROY
R/O A.T. ROAD
NEAR BADOL MISTANNA BHANDAR
TINSUKIA TOWN
POST OFFICE- TINSUKIA
POLICE STATION-TINSUKIA
DISTRICT-TINSUKIA
ASSAM.

6:SRI KAMAKHYA PRASAD BERIWAL
S/O LATE HARIDWAR BERIWAL
DIKOM BAZAR
POST OFFICE-DIKOM
DISTRICT- DIBRUGARH
ASSAM.

7:SMT. SISHU CHAKRABORTY
W/O SRI GOPAL CHAKRABORTY
R/O ANANDAPARA
DURGABARI
TINSUKIA TOWN
POST OFFICE
POLICE STATION AND DISTRICT-TINSUKIA
ASSAM.

8:SRI KAJOL CHAKRABORTY
S/O SRI GOPAL CHAKRABORTY
R/O ANANDAPARA
DURGABARI
TINSUKIA TOWN
POST OFFICE
POLICE STATION AND DISTRICT-TINSUKIA
ASSAM.

Advocate for : MR. S BANIK
Advocate for : MR. B CHAKRABORTY appearing for GOPAL CHAKRABARTY
AND 6 ORS

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri S. Banik

Advocates for the respondents : Shri D. Mozumder, Sr. Adv.
Shri S. Biswas

Date of hearing : **10.11.2022**

Date of Judgment : **29.11.2022**

JUDGMENT & ORDER

The aforesaid two petitions being connected, were heard together and are disposed of by this common judgment and order. In the first petition, the petitioner has put to challenge the action of the learned Executing Court which had executed the judgment and decree dated 09.03.2009 passed in Title Suit No. 6/2002. The petitioner alleges that the same was executed without affording a reasonable time to the judgment debtor which was required as per the decree. The petitioner has further alleged that the same was done to frustrate the scope to challenge the legality and validity of the principal judgment and decree of the learned Trial Court which was affirmed by the learned Appellate Court.

2. The subsequent case registered as CRP/472/2016 has been filed by invoking the provisions Article 227 of the Constitution of India against the judgment and decree dated 09.03.2009 passed by the learned Court of the Munsiff No. 1, Tinsukia in Title Suit No. 6/2002 whereby a degree of ejectment has been passed against the

petitioner. The said judgment and decree has also been affirmed by the learned Civil Judge, Tinsukia in Title Appeal no. 4/2009 vide judgment dated 05.12.2016. The aforesaid orders, as indicated above, are the subject matter of challenge in the subsequent case.

3. Since, the subject matter of CRP/472/2016 is the primary challenge against the judgment and decree, the same is taken up for consideration first as the result would also govern the issue involved in CRP/471/2016.

4. Before going to the issue which has arisen for determination in the two cases, the bare facts of the case may be put down as follows.

5. The petitioner is the defendant in the suit which was instituted for ejectment of the defendant who was the tenant under the respondent plaintiff. The suit was instituted mainly on the ground of the petitioner (tenant) being a defaulter.

6. Considering the nature of the argument which has been advanced and the grounds of challenge, the discussion of the facts are limited to the extent of those being relevant to the ground of argument.

7. The learned Trial Court had framed the following issues for determination-

- i. Whether the suit is maintainable in law and in fact?
- ii. Whether the plaintiff have right to sue?
- iii. Whether there is cause of action?
- iv. Whether defendants are the tenants under the plaintiff?
- v. Whether the plaintiff is entitled to the reliefs as claimed?
- vi. To what relief the parties are entitled to?

8. The primary contention of Shri S. Banik, learned counsel for the petitioner is that there was no specific issue on the aspect of default and therefore the learned

Trial Court had erred in giving a finding on the said aspect in absence of any issues. Shri Banik, the learned counsel however has been fair enough to draw the attention of this Court to paragraph 13 of the plaint which specifically pleads the aspect of "defaulter". The learned counsel however submits that the issue not being framed, no finding could have been given by the learned Trial Court.

9. The learned counsel for the petitioner has drawn the attention of this Court to the provisions of Order XIV Rule 13 as well as Order XV Rule 1 of the Code of Civil Procedure, 1908 (hereinafter the CPC). Order XIV Rule 1 lays down the requirement of framing of issues in particular, Rule 1(iii) has been pressed into service which states that every materials proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. As per Order XV Rule 1, if it appears that the parties are not in issue, the Court may at once pronounce judgment.

10. As reflected above, the thrust of the argument made on behalf of the petitioner is that since no issue has been framed on the aspect of default in payment of rent, no finding could have been given. The learned counsel for the petitioner accordingly submits that the aforesaid error would go into the root of the matter which would vitiate the entire judgment and decree and consequently the appellate judgment also.

11. In support of his submission, Shri Banik, learned counsel for the petitioner has placed reliance upon the following case laws-

i. AIR 1969 Patna 107 [Siri Chand Prasad and Ors. Vs. Lakshmi Singh and Ors.]

ii. AIR 1983 Allahabad 450 [Smt. Kaniz Fatima and Ors. Vs. Shah Naim Ashraf]

iii. (2001) 2 SCC 652 [Makhan Lal Bangal Vs. Manas Bhunia & Ors.]

12. Reliance upon the case of the Hon'ble Patna High Court has been made to bring home the role of the Appellate Court which has been laid down in Order XLI Rule 5 of

the CPC, as per which, the Appellate Court is required to frame an issue which the Trial Court had omitted to frame. The aforesaid case however will not be applicable in the instant case as, firstly, the aforesaid provision cannot be invoked by this Court and in any case, the *lis* between the parties have been duly adjudicated by giving a finding by the learned Trial Court.

13. Reliance upon the case of **Smt. K. Fatima (supra)** of the Hon'ble Allahabad High Court has been made on the requirement of framing an issue. However, in paragraph 12 of the judgment, it has been laid down as follows:

“12. In Jagannath Prasad Bhargava V. Lala Nathimal (AIR 1943 ALL 17) (DB), a Division Bench of this Court observed that :

“It is a very obvious legal principle that there should be no decision against a person who has not had an opportunity of being heard upon the point which is to be decided. Consequently, where in the case of an alienation of joint family property no issue as to legal necessity was framed as the question did not arise out of the pleadings, no decree can be based upon the finding that there was no legal necessity.”

On a parity of reasoning, it can very well be said that where no issue has been framed on a question, which arises out of the pleadings of the parties, the Court cannot proceed to record a finding on that point and no decree can be based upon that finding. In the present case, we find that the issues which have been framed do not cover all the pleas raised by the parties and the Court has proceeded to record a decision against defendant 2 by holding that he was not duly appointed as Sajjada Nashin although it has observed that no issue on the point has been framed Various other pleas were raised in the written statements and in the statement under O.10, R.2 of the Code, but no issues were framed covering those pleas. In that view of the matter, the judgment and decree passed by the Court below cannot be sustained.”

14. In the instant case, the aforesaid requirement of law has been dully fulfilled.

15. The case of ***Makhan Lal Bangal (supra)*** has been relied upon on the requirement of framing an issue. In paragraph 19, the Hon'ble Supreme Court has laid down that the object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. When the parties are clear about the *lis*, the evidence would also be confined to the same and also the pleadings.

16. The aforesaid principles laid down in ***Makhan Lal Bangal (supra)*** appear to be duly abided by in the instant case.

17. *Per contra*, Shri Dilip Mozumder, learned Senior Counsel assisted by Shri Santanu Chakrabarty, learned counsel for the respondent has submitted that the case projected by the petitioner is not at all correct. The learned Senior Counsel however submits that to bring home the points which would be urged by him and which have been taken into consideration by the learned Courts below, certain relevant facts are liable to be taken into consideration for proper appreciation of the issue arising in this case.

18. The Senior Counsel for the respondent has submitted that the original owner of the property was one Shri Kamakhya Prasad Beriwal and the respondent plaintiff was originally a tenant of Shri Beriwal. The present petitioner / defendant was sub-tenant of the plaintiff. In the year 1999, the property was purchased by the family of the plaintiff and accordingly he had stepped into the shoes of the owner. As there was default in payment of rent by the petitioner, notice demanding the rent was issued in spite of which, the rent was not paid. Accordingly, the suit was instituted for arrears of rent and for ejectment.

19. The learned Senior Counsel for the respondent has submitted that there was specific averment in the plaint on the aspect of default in payment of rent which was in fact the sole ground for ejectment. The learned Senior Counsel submits that what

was interesting to be noted was that the aforesaid allegation of default was dealt with by the defendant petitioner by claiming to be the owner of the premises which was specifically pleaded in paragraph 6 of the written statement wherein it was stated that the petitioner was occupying the premises on his own rights. The learned Senior Counsel submits that it was duly proved that the petitioner was a tenant and in that regard, the Tenancy Agreement was proved as Exhibit-1 and there was no denial to the said fact. It is accordingly submitted that there was no doubt whatsoever regarding existence of the landlord-tenant relationship which aspect was however denied by the petitioner by stating that there was no obligation to pay rent. It is accordingly submitted that the allegation of non-payment of rent / defaulted payment stood impliedly admitted. The learned Senior Counsel explains that in view of the specific denial of tenancy by the defendant there was also no scope to frame the issue.

20. In support of his submission, the learned Senior Counsel for the respondent, Shri Mozumder has placed reliance upon the case of **(2015) 3 SCC 624 [Shri Gangai Vinayagar Temple and Anr. Vs. Meenakshi Ammal and Ors.]**. In the said judgment, it has been laid down that if the parties are aware of a particular issue in the *lis*, non framing of the said issues will not be fatal.

21. So far as the other case is concerned, namely, CRP/471/2016, Shri Banik, learned counsel for the petitioner has submitted that the execution was done before the expiry of the period to vacate the premises. By referring to the judgment and decree, the learned counsel has submitted that though the judgment was dated 09.03.2009, the decree was signed only on 25.03.2009, as per which two months time was granted to vacate the premises. The Title Appeal was admitted on 20.04.2009 on which date an order of stay was also granted. The appeal was finally dismissed on 05.12.2016. However, on 16.12.2016 itself the eviction was carried out which has been assailed.

22. On the other hand, Shri Mozumder, learned Senior Counsel for the respondent has submitted that though the decree was signed on 25.03.2009, the said would relate back to the date of the judgment which was 09.03.2009 and therefore, the projection is not correct. Shri Banik, learned counsel for the petitioner, at this stage, submits that even if aforesaid view of the respondent is correct, then also, there was still about eight days time to vacate the premises and the same was however forcibly done on 16.12.2016.

23. Shri Mozumder, learned Senior Counsel for the respondent however submits that the contention made on behalf of the petitioner is incorrect as the judgment and decree of the learned Munsiff No. 1, Tinsukia had contained several segments including payment of arrears rents amounting to Rs.5,600/-, compensation @ Rs.400/- per month from February 2002 to February 2009 with interest @ 6% per annum and cost apart from the direction to hand over the khas possession of the suit premises. He submits that without fulfilling the other conditions, the present challenge cannot be maintained. The learned Senior Counsel further submits that there is no application for restoration of possession and therefore the present case is mere academic in nature as no fruitful purpose would be served.

24. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

25. Let us first deal with the submissions made with regard to the CRP/472/2016 in which the judgment and decree dated 09.03.2009 in Title Suit No. 06/2022 is concerned. A bare perusal of the issues framed would reveal that there was no specific issue framed regarding the aspect of defaulter and Shri Banik, the learned counsel appears to be correct in this regard. However, what is of relevance is that in paragraph 13 of the plaint, there is specific averment with regard to the aspect of defaulter. For ready reference, paragraph 13 of the plaint is quoted hereinbelow-

“13. That the causes of action for the suit arose on and from December, 2000 when the Defendants’ Predecessor’s defaulted in payment of rent: on 7th February, 2001- when the Defendants steps into the shoes of Bipad Bhanjan Roy, and on 27th December, 2001 – being the date of notice. On 8th January, 2002 – being the date of reply notice ; on 31st January, 2002 – being the date for vacating the Suit-Premises after clearing arrears of rent, on and from 1st February, 2002 – being the date of termination of tenancy and unauthorized occupation and on each and every date(s) thereafter within the jurisdiction of the Learned Court.”

26. Order XIV Rule 1 (3) of the CPC states that each material proposition affirmed by one party and denied by the adverse party shall form the subject of a distinct issue. The aforesaid provision is extracted hereinbelow-

“Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.”

27. In the instant case, it is evident that the parties were in dispute regarding the allegation being a defaulter in payment of rent which was however refuted by stating in the written statement that the defendant (petitioner) was not even a tenant. Therefore, the ingredients of framing an issue and answering the same was very much available before the Trial Court and only because of the fact that a specific issue was not framed, the judgment and decree cannot be criticized.

28. This Court also finds force in the argument of the learned Senior Counsel for the respondent that the averment regarding the Tenancy Agreement was not denied in the written statement and in the said Tenancy Agreement, the original owner, Shri Kamakhya Prasad Beriwal was himself a witness.

29. In the case of **Gangai (Supra)**, the Hon’ble Supreme Court had laid down that if the parties are aware of a particular point of dispute, non framing of issues on the

said point will not be fatal. In paragraph 16.1, the same has been explained, the relevant part of which is quoted hereinbelow -

“16.1. ... There is no gainsaying that where parties are aware of the rival cases the failure to formally formulate an issue fades into insignificance, especially when it is prominently present in connected matters and extensive evidence has been recorded on it without demur.”

30. There cannot be any dispute with the proposition of law that under Order XIV Rule 5 of the CPC, Court has the power to amend an issue or frame an additional issue at any time to decide the dispute / controversy between the parties to the *lis*. In fact, under Order XIV Rule 5 CPC, power has been vested to amend and strike out issues which can be done at any time before passing of a decree. The Hon’ble Supreme Court in the case of **(1978) 2 SCC 91 [Ganesh Trading Co. v. Moji Ram]** has held as follows;

“2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.”

31. The objective of framing issues is to extend adequate opportunity to the parties in dispute to adduce evidence and advance arguments in support of their respective cases. There should not be any ambiguity in the minds of the parties to the *lis* with regard to the issue in dispute. In the instant case, though it appears that a specific issue on the ground of default has not been framed, the parties were in the know that the suit itself was for ejectment on the principal ground of default which is specifically pleaded in paragraph 13 of the plaint. Therefore, the aforesaid infirmity is an inconsequential one as both the parties to the dispute knew fully well about the

said issue and had placed their respective cases before the Court. This Court also finds force in the argument made on behalf of the respondent plaintiff that since the fact of tenancy was itself disputed, the aforesaid omission to frame an issue on defaulters cannot be held to be an illegality.

32. In view of the above, this Court is of the considered opinion that the infirmity, if any, in not framing a specific issue in the present case has not caused any prejudice to the parties and therefore, the grounds taken by the petitioner in assailing the judgment and decree cannot be regarded as a valid ground. Consequently, CRP/472/2016 is dismissed.

33. In so far as CRP/471/2016 is concerned, in view of the dismissal of CRP/472/2016, no practical purpose would be served by its adjudication which has merely become academic in nature. Nonetheless, the contention of the petitioner was that the execution of a decree was done before expiry of the period given in the decree itself. The contention of the petitioner that the calculation of time has to be done from the date of the decree does not appear to be in accordance with law as the date of the decree would relate back to the date of the judgment.

34. In the instant case, the judgment was signed on 09.03.2009 while the decree was signed on 25.03.2009. Order XX Rule 7 CPC is with regard to the Date of Decree, which reads as follows:

***“7. Date of decree.** – The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.”*

35. Though, it may appear that the execution was done about eight days earlier than the deadline, this Court finds force in the contention made on behalf of the respondent that the said aspect cannot be read in isolation and has to be read conjointly with the other aspects of the judgment wherein a number of obligations



were placed on the judgment debtor. It is an admitted fact that the other parts of the judgment namely, payment of arrear rent, compensation, interest etc. were not complied with by the judgment debtor and therefore, equity would not permit the judgment debtor to raise the aforesaid point.

36. In view of the above, CRP/471/2016 also stands dismissed.

37. No order as to cost.

JUDGE

Comparing Assistant