



GAHC010098782022

Page No.# 1/10



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

Case No. : CRP/57/2022

NARAYAN MANDAL
S/O LATE JATINDRA MANDAL, R/O VILL-NO. 2 DUNGABORI, P.O.-
JAGIROAD, MOUZA-GOVA, P.S.- JAGIROAD, DIST-MORIGAON, ASSAM

VERSUS

SANJIB ROY AND 12 ORS
S/O LATE ABHINASH ROY, R/O VILL- NO. 2 DUNGABORI, P.O.-JAGIROAD,
MOUZA-GOVA, P.S.-JAGIROAD, DIST-MORIGAON, ASSAM

2:SUBAL DEVNATH
S/O LATE JOGESH DEVNATH

7:NIL KUMAR SARKAR
S/O LATE KRISHNA MOHAN SARKAR

8:KARTIK DEBNATH
S/O LATE RAJ MOHAN BHOWMIK

9:CHAN MOHAN BHOWMIK
S/O LATE RAJ MOHAN BHOWMIK

10:SUKUMAR ROY
S/O LATE ABINASH ROY
ALL ARE R/O VILL NO. 2 DUNGABORI
P.O.-DUNGABORI
MOUZA-GOVA
P.S.-JAGIROAD
DIST-MORIGAON
ASSAM

11:THE STATE OF ASSAM



REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM
DISPUR
GUWAHATI
ASSAM

12:THE DEPUTY COMMISSIONER
MORIGAON DISTRICT
MORIGAON
ASSAM

13:THE OFFICER-IN-CHARGE OF JAGIROAD POLICE STATION
P.O.-JAGIROAD
DIST-MORIGAON
ASSA

For appellant(s) : Mr. I. Choudhury

For respondent(s) : Mr. A. L. Mandal (Res. nos. 1 & 10),
Mr. P. Kataki (Res. nos. 2, 7, 8 & 9),
Ms. D. R. Deka & Ms. K. Phukan
(Res. nos. 11, 12 & 13)

Date of hearing : 20.04.2023

Date of judgment : 28.04.2023

JUDGMENT AND ORDER (CAV)

– BEFORE –

HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

Date : 28-04-2023

1. Heard Mr. I. Choudhury, learned counsel for the revisionist. Also heard Mr. A. L. Mandal, learned counsel for the respondents Nos. 1 & 10 as well as Mr. P. Kataki, learned counsel for the respondent Nos. 2, 7, 8 & 9 and Ms. K. Phukan learned counsel as well as Ms. D. R. Deka, learned counsel for the respondent Nos. 11, 12 & 13.

2. This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, has been preferred by the Revisionist Sri Narayan Mondal



challenging the impugned order dated 08.04.2022, passed by Munsiff No. 2, Morigaon, in Misc. (J) Case No. 33/2021 (*arising out of Title Suit No. 3/2022*).

3. The facts relevant for adjudication of this Civil Revision Petition, in brief, are as follows:

The Respondent No.1, Sri Sanjib Roy, as Plaintiff, had instituted a Title Suit against the present Revisionist and 12 others for declaration of right, title and interest over the suit land and fishery measuring about 4 bighas which falls in Govt Dag No. 32 situated at village No. 2 Dungabori Kissam under Mouza-Gova in the district of Morigaon Assam. The said suit has been registered as Title Suit No. 3/2020 in the Court of learned Munsiff No. 2 Morigaon.

4. The present Revisionist, who was made the principal defendant i.e. the defendant No. 1, in the aforementioned Title Suit had appeared, before learned trial court, and filed his written statement and also filed a petition under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure praying for rejection of the plaint mainly on the ground that the Suit filed by the Respondent No-1 falls within the category of cases mentioned under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908. Said Petition was registered as Misc. (J) Case No. 33/2021. However, after hearing learned counsel for both sides, the Court of learned Munsiff No. 2, Morigaon dismissed the said petition by order dated 08.04.2022, which is impugned in the present Civil Revision Petition .

5. For the sake of convenience, the impugned order is quoted herein below:

*“Misc. (J) Case No.33/2021
(Arising out of T.S. No.03/2020)*

08.04.2022

Plaintiff is duly represented.

Defendant/Petitioner is duly represented.

Today's date was fixed for order on 159/21 filed by the defendants/petitioners under Order VII Rule 11 CPC. Vide the said petition the defendant has submitted that the suit filed by the plaintiff is barred under Assam Land and Revenue Regulation Act, 1886 as the plaintiff has sought right, title and interest over a government plot of land.

The defendant Narayan Mandal has submitted that the plaintiff has preferred the instant suit claiming right, title, interest over the suit land over a fishery which is a government land and is thus barred under relevant provision of law.

In order to decide the petition, it is pertinent to go through the relevant provision of CPC. Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected "where the suit appears from the statement in the plaint to be barred by any law". Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.

In the present case, a meaningful reading of the plaint makes it abundantly clear that, whether the suit land has been allotted to the plaintiff or not is a fact in issue which can be decided only during the trial of the suit after evidence is being led. And as such, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by Section 154(1)(a) of the Assam Land and Revenue Regulation Act, 1886.

Further the defendant has no locus standi to file this instant petition as the plea taken by him ought to have been taken by the government who has been made a proforma defendant in the suit and the relief sought by the plaintiff in the suit if allowed would affect the government.

Therefore in view of the above discussion, the instant petition is rejected.

The Misc. (J) case accordingly stands disposed of."

6. Learned Counsel for the revisionist has submitted that learned Munsiff No. 2, Morigaon wrongly dismissed the petition under Order 7 Rule 11 of CPC filed by the present petitioner on the ground that the present petitioner has no *locus standi* to file the said petition under Order 7 Rule 11 CPC. Learned counsel also submitted that the learned trial court also erred in not taking into consideration the fact that if the suit, filed by the Respondent No.-1, is decreed by allowing the prayer of the plaintiff, it will result in formation of records of right and same is barred in view of Section 154 (1) (c) of the Assam Land and Revenue Regulation 1886.

7. On the other hand, the learned counsel for the Respondent No. 1 has submitted that the learned Trial Court has committed no error in passing the impugned order, as for exercising jurisdiction under Order 7 Rule 11 (d) CPC learned trial Court has only to confine itself to the statement in the plaint for arriving at a conclusion as to whether the suit is barred by the law or not. Learned counsel for the Respondent No. 1 also submitted that the suit filed by the Respondent No. 1 is a suit for declaration of right, title and interest as well as for permanent injunction against the principal defendant, that is, the present revisionist and nowhere in the plaint there is any prayer for formation of records of right in respect of the suit land. Learned counsel also submitted that the suit land was allocated to the predecessor in interest of the Respondent No. 1 and though the State of Assam has been made *pro forma* defendant in the suit, no relief has been claimed against the government in the said suit. Learned counsel for the Respondent No.1 submitted that learned trial court has correctly dismissed the petition for rejection of plaint as from the statement in the plaint,

nowhere it appears that the suit is barred by any law. In support of his contention, learned counsel has cited the judgment of Hon'ble Supreme Court of India in “***Dahiben v. Arvindbhai Kalyanji Bhanusali***,” reported in “**(2020) 7 SCC 366**”.

8. I have considered the submissions made by the learned counsel for both sides as well as gone through the materials available on record thoroughly. For the sake of convenience, the relevant provision of Order 7 Rule 11 CPC is quoted herein below:

“**11. Rejection of plaint.**—The plaint shall be rejected in the following cases—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
- (d) where the *suit appears from the statement in the plaint* to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

(Emphasis supplied)

9. Hon'ble Supreme Court of India has observed in “***Dahiben v. Arvindbhai Kalyanji Bhanusali***,” reported in “**(2020) 7 SCC 366**” as follows :-



“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

“The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.”

In the case in hand, if we go through the copy of plaint, which is annexed as Annexure 1 along with the revision petition, it appears that it is a suit for declaration of right, title and interest of the plaintiff over the suit land and the fishery mentioned in Schedule A of the plaint on the basis of allotment given by Revenue Authority as well as allotment made by Dungabori Gova Panchayat. Though, in paragraph No. 1 of the plaint, it is stated that the disputed fishery is situated over a plot of land measuring 4 bighas which is covered by Govt Dag

No. 32 of village No. 2 Dungabori Kissam under Gova Mouza in the District of Morigaon Assam, however, it is also mentioned in paragraph No. 2 of the plaint that as the father of the respondent no.1/plaintiff as well as some of the persons who were arraigned as proforma defendants were landless persons, the Govt. allotted them one bigha land each in the said Dag. It is further stated that due to the great flood in the years 1984 and 2004, when the whole District of Morigaon was inundated in flood waters, the records of right of the land of the plaintiff/the present respondent no.1 could not be traced out and submitted along with the plaint. If we look at the prayer portion of the plaint, it appears that the present Respondent No. 1, as plaintiff, has prayed for a decree of declaration of his right, title and interest over the suit land and fishery situated over the said land and a decree of permanent injunction against the present revisionist and his heir, successors, agents, servants etc. from disturbing the possession of the respondent no. 1 over the suit land and fishery and no relief is claimed against the government.

11. Now, if we look at Section 154 (1) (c) of the Assam Land and Revenue Regulation, 1886, it appears that the matter regarding the formation of the records of right or the preparation, signing, or alteration of any document contained therein has been exempted from the cognizance of Civil Court. However, in the instant case a plain reading of the statement in the plaint, does not, in any manner suggests that "*formation of the records of right or the preparation, signing, or alteration of any document contained therein*" has either been pleaded or prayed for in the plaint. No relief has been prayed against any revenue authority. The submission of the learned counsel for the Revisionist that in case of allowing the prayer made by the plaintiff /respondent no.1, in his plaint, it will result in formation of records of right and thus the bar of Section

154 (1) (c) of the Assam Land and Revenue Regulation 1886 would be applicable in this case is too speculative and premature and same cannot be the basis for considering whether the plaint is to be rejected or not as Order 7 Rule 11 (d) CPC has provided in clear and ambiguous terms that the matters to be considered for taking a decision under Order 7 Rule 11 (d) are only the *statements made in plaint* and the phrase "statement made in plaint" may not be stretched to include any other materials at that stage of the proceeding in a suit.

12. The Court of learned Munsiff No.2, Morigaon has very correctly observed in impugned order itself that "*in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding any such application (an application under Order 7 Rule 11 (d) of CPC) must have due regard only to the statement in the plaint. Whether the suit is barred by the law must be determined from the statement in the plaint and does not open to decide the issue on the basis of any other material including the written statement in the case.*"

13. In view of the above discussion and reasons, this Court finds no anomaly, illegality or any material irregularity in the impugned Order. Learned Trial Court has rightly dismissed the prayer for rejection of the plaint, Order 7 Rule 11 of CPC, filed by the present revisionist before the learned trial court.

14. No interference, in the impugned Order, is warranted by this Court. Accordingly, this Civil Revision Petition is hereby dismissed. Let, a copy of this order be furnished to the learned trial court also.



15. The parties shall bear their own cost.

JUDGE

Comparing Assistant