



GAHC010274652023

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

Case No. : CRP/142/2023

SMTI. BHABANI KALITA
W/O SRI MAHESH KALITA
R/O JAMORTAL
MIRZA
P.O.-MIRZA
DIST-KAMRUP (M)
ASSAM
PIN-781009

VERSUS

NIRANJAN MAHANTA AND 6 ORS
S/O LATE MAHIM CHANDRA MAHANTA
R/O VILL-BAJARPARA
P.O.-PALASHBARI
DIST-KAMRUP
ASSAM-781128

2:SMTI. ROHINI KALITA
W/O LATE SUBODH CHANDRA KALITA
R/O KUMARPARA
P.O.-BHARALUMUKH
GUWAHATI
DIST-KAMRUP (M)
ASSAM
PIN-781009
3:PRANAB KALITA
S/O LATE SUBODH CHANDRA KALITA
R/O KUMARPARA
P.O.-BHARALUMUKH
GUWAHATI
DIST-KAMRUP (M)



ASSAM
PIN-781009
4:DIBYAJYOTI KALITA
S/O LATE SUBODH CHANDRA KALITA
R/O KUMARPARA
P.O.-BHARALUMUKH
GUWAHATI
DIST-KAMRUP (M)

ASSAM
PIN-781009
5:SMTI KALPANA KALITA
W/O AMIYA KALITA
R/O CHATTRIBARI
P.O.-BHARALUMUKH
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-781009

6:SMTI MOUSUMI KALITA
D/O LATE SUBODH CHANDRA KALITA
R/O KUMARPARA
P.O.-BHARALUMUKH
GUWAHATI
DIST-KAMRUP (M)
ASSAM
PIN-781009

7:SMTI JUTIKA KALITA
D/O LATE SUBODH CHANDRA KALITA
R/O KUMARPARA
P.O.-BHARALUMUKH
GUWAHATI
DIST-KAMRUP (M)
ASSAM
PIN-781009

For the Petitioner(s) : Mr. B. Pathak, Advocate

For the Respondent(s) : Mr. A. C. Sharma, Advocate

Date of Hearing : **05.03.2024**

Date of Judgment : **05.03.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

1. This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short "the Code") seeking revision of the order dated 10.08.2023 passed by the learned Civil Judge (Senior Division), Kamrup, Amingaon (hereinafter referred to as "the Trial Court") in Misc. (J) Case No.34/2023 arising out of Title Suit No.116/2022 wherein the application filed by the Petitioner under Order VII Rule 11 (d) read with Section 151 of the Code for rejection of the plaint was rejected.
2. To decide the legality and validity of the said order impugned in the instant proceedings, this Court finds it relevant to take note of that the instant proceedings relates rejecting an application seeking rejection of the plaint. Considering the scope, this Court would therefore limit itself as to whether from a perusal of the plaint, it discloses that the same is barred by any provisions of law.
3. A perusal of the plaint in Title Suit No.116/2022 reveals that the Plaintiff/Respondent herein had entered into an agreement with one Subodh Chandra Kalita (since deceased) who was the husband of the Defendant No.1 in the said suit and the father of the Defendant Nos. 2 to 6. The said agreement was registered bearing Deed No.4972/2006 on 22.05.2006 for sale of 2 Kathas of land covered by Dag No.934 of K.P. Patta No.410 for a consideration of Rs.7,00,000/- out of which Rs.1,00,000/- was paid as advance by the Respondent herein to the predecessor-in-interest of the Defendant Nos. 1 to 6.

4. During the lifetime of Late Subodh Chandra Kalita, it has been alleged in the plaint that a further amount of Rs.1,00,000/- was paid by cheque on 14.11.2007 and another additional amount of Rs.50,000/- was paid in cash. Under such circumstances, it was the case of the plaintiff that only Rs.4,50,000/- remained to be paid by the plaintiff at the time of registration of Sale Deed. Unfortunately, the said Subodh Chandra Kalita expired on 22.06.2009.

5. A perusal of the plaint reveals that the plaintiff thereupon approached the Defendant Nos. 1 to 6 to execute the Deed of Sale but the Defendant No.1 expressed that there was some civil litigations pending regarding the land including the suit land during the lifetime of Late Subodh Chandra Kalita and they would execute the registered Sale Deed as soon as the litigations ended. The plaintiff thereupon made enquiry and found out that there was a Title Suit No.227/2001 instituted by Late Subodh Chandra Kalita against one Shri Akhil Kalita and others which was decreed in favour of the legal heirs of Late Subodh Chandra Kalita and the matter was finally compromised in appeal in favour of the Defendant Nos. 1 to 6. No date whatsoever was mentioned in the plaint.

6. Be that as it may, it is mentioned in paragraph No.9 of the plaint that the plaintiff again approached the Defendant Nos. 1 to 6 for execution of the registered Sale Deed in respect to the suit land by accepting the balance amount of the said consideration. It was alleged that the Defendants without executing the Registered Sale Deed in favour of the plaintiff tried to sell the entire land covered by Dag No.934 and 1053 including the suit land to some other person and prayed for sale permission from the Deputy Commissioner,

Kamrup at Amingaon. Under such circumstances, the plaintiff had filed an application before the Deputy Commissioner, Kamrup, Amingaon with a prayer not to allow the Defendant Nos. 1 to 6 to sell the suit land which Late Subodh Chandra Kalita entered into the agreement with the plaintiff. The said application was registered as KRM 36/15 in the Office of the Deputy Commissioner, Kamrup, Amingaon. It is however relevant to take note of that there is no date mentioned as to when the plaintiff approached the defendant Nos. 1 to 6 or when the defendant Nos. 1 to 6 wanted to sell the entire plot of land including the suit land.

7. Be that as it may, it is stated in the plaint that the learned Additional Deputy Commissioner after considering the matter vide the order dated 17.08.2016 allowed the Defendant Nos. 2 to 6 to sale only 3 Kathas 12 Lechas of land covered by Dag No.934 which excludes the suit land measuring 2 Kathas covered by Dag No.934 and the Additional Deputy Commissioner clearly mentioned in his order that as of now, there will be bar on seeking NOC for 2 Kathas under Dag No.934 of K.P. Patta No.410. It was also mentioned in the plaint that the boundary of that 2 Kathas of land was also specifically mentioned in the said order. It is further stated in the plaint that the Additional Deputy Commissioner vide the said order dated 17.08.2016 granted permission to the Defendant Nos. 1 to 6 for sale of 3 Kathas 12 Lechas of land covered by Dag No.934 whereas after exclusion of 2 Kathas of the agreement land of the plaintiff, there remained only 2 Kathas 12 Lechas of land for sale to be made in Dag No.934. It was also mentioned that the Additional Deputy Commissioner had wrongly shown the amount of existing land in Dag No.934 as 1 Bigha 12 Lechas instead of 4 Kathas 12 Lechas.

8. In paragraph No.10, it was alleged that the Defendant Nos. 1 to 6 were again trying to sale their land including the plaintiff agreement land and as such the plaintiff submitted an application before the Circle Officer, Palashbari Revenue Circle to stop granting of any sale permission, measurement of the land etc. On the other hand, the Defendant No.7 also submitted an application before the Circle Officer, Palashbari Revenue Circle for her mutation in respect of 1 Bigha 1 Katha 12 Lechas of land covered by Dag No.1053 (3 Kathas) and Dag No.934 (3 Kathas 12 Lechas) of K.P. Patta No.410 of village Kokjhar, Mouza Chayani in the District of Kamrup claiming to have been purchased it from the Defendant No.1 to 6. Further to that, it was mentioned in the plaint that the Circle Officer, Palashbari Revenue Circle registered a Misc. Case being Misc. Case No.3/2017-18 in respect of application for mutation submitted by the Defendant No.7 and the application submitted by the plaintiff to stop granting of permission for sale and measurement of the land and the Circle Officer after hearing the parties passed an order on 30.12.2017 by which he allowed mutation of 1 Bighas 1 Katha 12 Lechas of land i.e. 3 Kathas covered by Dag No.1053 and 3 Kathas 12 Lechas covered by Dag No.934 although in fact as per the plaintiff, there was only 2 Kathas 12 Lechas of land in Dag No.934 after exclusion of 2 Kathas of the agreement land of the plaintiff from Dag No.934.

9. It was categorically mentioned in the plaint that from the proceedings before the Circle Officer, the plaintiff could come to know about the sale of 1 Bigha 1 Katha 12 Lechas of land by the Defendant Nos. 1 to 6 to Defendant No.7. No date whatsoever was mentioned as to when the plaintiff came to learn about the sale made in favour of the Defendant Nos. 1 to 7. It was stated in the plaint that prior to the said knowledge, the plaintiff had

instituted a Title Suit No.56/2017 before the Court which was registered on 31.07.2017 against the defendant Nos. 1 to 6 for specific performance of the contract in respect to the agreement dated 22.05.2006 executed in favour of the plaintiff by Late Subodh Chandra Kalita, the predecessor-in-interest of the Defendant Nos. 1 to 6. This Court finds it pertinent to note that taking into account the specific statements made in the plaint that the Circle Officer had passed the order on 30.12.2017 after hearing the parties including the plaintiff, it can be very well presumed that the plaintiff's knowledge of the Deed of Sale made in favour of the Defendant No.7 by the Defendant Nos. 1 to 6 has to be before 30.12.2017.

10. From a further perusal of the plaint, it reveals that the said suit being Title Suit No.56/2017 was dismissed for default on 04.04.2018 for not taking steps by the concerned advocate which the plaintiff could know only in the month of January, 2022 and obtained certified copy of the Title Suit No.56/2017 and Misc.(J) Case No.108/2017. Thereupon, the plaintiff made further verifications and after getting certain information about the sale of the land to the Defendant No.7 by the Defendant Nos. 1 to 6 had filed the instant suit seeking specific performance of the agreement dated 22.05.2006; seeking declaration that the Sale Deed No.2443/2016 dated 24.10.2016 executed by the Defendant Nos. 1 to 6 in favour of the Defendant No.7 is not binding on the plaintiff and it is liable to be corrected/rectified by excluding the suit land measuring 2 Kathas from the area of the land shown to be sold by the said Sale Deed; for issuance of precept; permanent injunction etc. It is relevant to note that no material particulars have been given as regards what verification was carried inasmuch as prior to 30.12.2017, the plaintiff had due knowledge of the

Deed of Sale.

11. Upon receiving the summons, the Defendant No.7 had filed an application under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that a perusal of the plaint discloses that the said suit was barred by limitation.

12. This Court had duly taken note of the order which have been passed by the learned Trial Court whereby the application under Order VII Rule 11 of the Code was rejected on the grounds and reasons stated therein and thereupon, the instant proceedings have been initiated. The question therefore arises as to whether from a perusal of the plaint, it appear that the suit is barred by limitation?

13. The facts enumerated hereinabove clearly shows that the plaintiff herein had filed Title Suit No.56/2017 seeking specific performance of the agreement dated 22.05.2006. The Plaint of Title Suit No.116/2022 is not clear as to whether the agreement contained specific clause(s) thereby fixing the date of performance. For deciding, the question as to whether the suit was barred by limitation seeking specific performance of a contract, this Court would have to look into Article 54 of the Limitation Act, 1963. Article 54 of the Limitation Act, 1963 reads as follows:

Section 54	Description of suit	Period of limitation	Time from which period begins to run
54	For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

14. From a perusal of the above quoted Article, it would be seen that in respect to a suit for specific performance of a contract, the period of limitation is 3 (three) years from the date fixed for performance or if no such date is fixed when the plaintiff had notice that the performance is refused. The expression "the date fixed for performance" is a crystallized notion. When a date is fixed, it means there is a definite date fixed for doing a particular act. Therefore, there is no question of finding out the intention from other circumstances i.e. the expression "date fixed for performance" is definitely suggestive of a specified date in calendar. In the case of **Ahmmadsahab Abdul Mulla Vs. Bibijan** reported in (2009) 5 SCC 462, the Supreme Court observed at Paragraph Nos. 11 and 12 that the inevitable conclusion to the expression "date fixed for performance" is a crystallized notion which is clear from the fact that the second part "time from which period begins to run" refers to a case where no date is fixed. It was observed by the Supreme Court in the said judgment that when a date is fixed, it means there is a definite date fixed for doing a particular act. Even in the second part, the stress is on "when the plaintiff has notice that the performance is refused". Here again, as per the Supreme Court, there is a definite point of time when the plaintiff notices the refusal. In that sense, both the parts referred to definite dates. Therefore, the Supreme Court in the said judgment opined that there is no question of finding out any intention from other circumstances. Paragraph Nos. 11 and 12 having relevance to the instant proceedings are reproduced herein under:

"11. The inevitable conclusion is that the expression 'date fixed for the performance' is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is



fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on 'when the plaintiff has notice that performance is refused'. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression 'date' used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

15. In the instant case, it would be seen from the facts as disclosed in the plaint that the plaintiff has filed a suit for specific performance which was registered on 31.07.2017. At the least, immediately preceding the date of filing of the said suit being Title Suit No.56/2017 can be taken as a date on which the plaintiff had notice of the refusal. The said suit however was dismissed for default on 04.04.2018 as admitted in the plaint. If the suit was dismissed under Rule 2 or Rule 3 of Order IX, there is no bar for the plaintiff to bring a fresh suit unlike a dismissal of the suit in terms with Rule 8 of Order IX where there is a bar in view of Rule 9 of Order IX of the Code. Therefore, the very filing of the present suit, it can be construed that the earlier suit was dismissed under Rule 2 or Rule 3 of Order IX of the Code. Be that as it may, the most important aspect of the matter is that when the plaintiff had filed the suit being Title Suit No.56/2017 seeking specific performance of the agreement dated 22.05.2006 as it is apparent from a perusal of paragraph No.11 of the present plaint, the Plaintiff therefore had

due notice of the refusal of the defendants. At the cost of repetition, the date of refusal as noticed by the plaintiff therefore has to be immediately prior to the filing of Title Suit No.56/2017.

16. Now, therefore the question arises as to whether the present suit which is being filed seeking specific performance of the agreement dated 22.05.2006 is barred by limitation on the face of perusal of the plaint. Taking into account that admittedly, the present suit was filed in the year 2022 and the refusal of the Defendants was prior to 31.07.2017 which is apparent from a perusal of the plaint, the instant suit so far as seeking specific performance of the contract is barred by limitation. Another very pertinent aspect which is required to be taken note of that the plaintiff's right to challenge the Deed of Sale dated 24.10.2016 only arises if the plaintiff has right to seek specific performance of the agreement dated 22.05.2006 in the present suit inasmuch as sans such a right, the plaintiff is a complete stranger to the suit land as well as the Deed of Sale dated 24.10.2016.

17. Now the next question therefore arises as to whether the learned Trial Court was justified in rejecting the application under Order VII Rule 11 (d) of the Code vide the impugned order. At this stage, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of **Fatehji & Company and Others Vs. L. M. Nagpal and Others** reported in **(2015) 8 SCC 390** and more particularly to paragraph Nos. 5, 6, 7, 8 & 9 which are reproduced herein under:

“5. We considered the rival submissions. The specific performance is claimed of a written agreement of sale dated 2.7.1973 and as per the terms the performance of the contract was fixed till 2.12.1973. The defendants by subsequent letters

dated 7.4.1975, 1.10.1975 and 1.8.1976 sought for extension of time to enable them to obtain permission of lessor and the last extension of six months expired on 1.2.1977. In view of Order VII Rule 11(a) and 11(d) the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. Article 54 of the Limitation Act stipulates that the limitation for filing the suit for specific performance of the contract is three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has noticed that performance is refused.

6. *The fact that the plaintiffs were put in possession of the property agreed to be sold on the date of agreement itself would not make any difference with regard to the limitation of filing the suit for specific performance. In fact both the courts below have rightly held that Article 54 of the Limitation Act does not make any difference between a case where possession of the property has been delivered in part performance of the agreement or otherwise. In the same way the courts below have also concurrently held even if any permission is to be obtained prior to the performance/completion of the contract, the mere fact that the defendants have not obtained the said permission would not lead to inference that no cause of action for filing the suit for specific performance would arise. Further it is also not the case for postponing the performance to a future date without fixing any further date for performance. The last extension for a period of six months w.e.f. 1.8.1976 sought for by the defendants expired on 1.2.1977. The present suit seeking for specific performance was filed by the plaintiffs on 29.4.1994, much beyond the period of three years.*

7. *Yet another circumstance was pointed out to prove the laches on the part of the plaintiffs. The sons of the second defendant filed a suit in July 1985 against defendants 2, 3 and the plaintiffs seeking for declaration that the present suit property is their ancestral joint family property and the sale made by the defendants in favour of the plaintiffs be declared as null and void. The plaintiffs herein contested the said suit and it came to be dismissed on 5.4.1989. The suit*

for specific performance was not filed within three years from the said date also.

8. *The plaintiffs averred in the plaint that the last and final cause of action accrued and arose to them after August 1991 when the defendants succeeded in hiding themselves and started avoiding the plaintiffs and the cause of action being recurring and continuous one, they filed the suit on 29.4.1994. As already seen the original cause of action became available to the plaintiffs on 2.12.1973, the date fixed for the performance of the contract and thereafter the same stood extended till 1.2.1977 as requested by the defendants. Though the plaintiffs claimed that oral extension of time was given, no particulars as to when and how long, were not mentioned in the plaint. On the other hand even after knowing the dishonest intention of the sons of the second defendant with regard to the suit property in the year 1985, the plaintiffs did not file the suit immediately. The suit having been filed in the year 1994 is barred by limitation under Article 54 of the Limitation Act.*

9. *We are of the view that the High Court committed manifest error in reversing the well-considered order of the trial court rejecting the plaint as barred by the law of limitation and the impugned judgment is liable to be set aside. In the result, the appeal is allowed and the impugned judgment of the High Court is set aside and the order of the trial court is restored. No costs."*

18. The above proposition of law also have been followed by the Supreme Court in the case of **Ramit Sethi Venkatanna and Another Vs. Nasyam Jamal Saheb and Others** reported in (2023) SCC Online SC 521 as well as in the case of **Sabbir (Dead) Through Lrs. Vs. Anjuman (Since Deceased) Through Lrs.** reported in (2023) SCC Online SC 1292.

19. The above proposition of law categorically shows that if from a perusal of the plaint, it discloses that the suit is barred by limitation, the Court is required to exercise the power under Order VII Rule 11 (d) of the Code and reject the plaint. Not doing so would be permitting manifestly vexatious and

meritless proceedings to clog the precious judicial time and resultantly the deserving and meritorious matters would be deprived of due time and consideration. At this stage, this Court finds it apt to refer to the observations of His Lordship V. R. Krishna Iyer J. (as His Lordship then was) in the judgment of the Supreme Court in the case of ***T. Arivandandam Vs. T. V. Satyapal and another*** reported in ***(1977) 4 SCC 467*** wherein at Paragraph No.5 of the said opinion, it was observed that if on a meaningful - not formal - reading of the plaint, it is manifestly vexatious and meritless, in a sense of not disclosing a clear right to sue, the Court should exercise its powers under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. It was observed that if clever drafting had created the illusion of cause of action, it is required to be nipped at the bud at the first hearing by examining the party searchingly under Order X of the CPC. His Lordships further observed that it is a duty cast upon Judicial Officer to take such steps in respect to irresponsible law suits.

20. In the present case, as already observed, the perusal of the plaint of the present suit would clearly show that the suit was barred by limitation. Consequently, this Court, therefore interferes with the impugned order dated 10.08.2023 passed in Misc. (J) Case No.34/2023 arising out of Title Suit No.116/2022 and rejects the plaint in Title Suit No.116/2022.

21. Accordingly, the instant proceedings therefore stands allowed.

22. Before parting with the records, this Court finds it relevant to observe that the instant adjudication relates to the decision as regards rejection of the plaint in Title Suit no.116/2022 on the ground that a perusal of the plaint discloses that it is barred by limitation. The said observations however shall



not preclude the plaintiff to approach the Court for restoration of the Title Suit No.56/2017, if otherwise permissible under law.

23. The interim orders passed in the accompanying Interlocutory Applications stands vacated.

24. In the peculiar facts of the present case, this Court is not inclined to impose costs.

JUDGE

Comparing Assistant