



GAHC010254982023

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

Case No. : CRP/186/2023

KHANINDRA NATH KEOT
S/O LATE DEBENDRA NATH KEOT, ASSAM ENGINEERING INSTITUTE
COMPLEX, P.O.-CHANDMARI, GUWAHATI-3, DIST- KAMRUP (M), ASSAM

VERSUS

SUJEET KUMAR CHOUDHURY
S/O LATE MAHESH CHOUDHURY, WARD NO. 4, RANGAPARA TOWN,
MOUZA-BALIPARA, DIST- SONITPUR, ASSAM

Advocate for the Petitioner : Mr. S. K. Singh, Sr. Advocate

Mr. A. Ganguli, Advocate

Advocate for the Respondent : Ms. R. Choudhury, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 27.03.2024

Date of Judgment : 27.03.2024

JUDGMENT AND ORDER (ORAL)

This is an application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'the Code') challenging the order dated 16.09.2023 passed in Misc. (J) Case No.64/2022 arising out of Title Suit No.23/2019. By the said impugned order, the learned Trial Court had



rejected the application filed under Order VII Rule 11 of the Code by the defendant No.1.

2. From a perusal of the plaint and the documents relied thereupon, it appears that the defendant No.1 for himself and the defendant Nos.2, 3 & 4 had entered into an agreement dated 17.04.2012 with the plaintiff for sale of the land described in Schedule-A to the plaint. It further appears from the plaint that out of the total consideration, an amount of Rs.6,50,000/- was duly received by the defendant No.1. Further to that, the defendant No.1 for and on behalf of the other defendant Nos.2, 3 & 4 had extended the performance of the said agreement for sale vide a Deed of Extension of the earlier agreement for sale dated 15.04.2015 thereby acknowledging that he has duly received the amount of Rs.6,50,000/-. Subsequent thereto, vide another agreement, the period of performance of the said agreement for sale was further extended to another 6 months. Further to that, vide another extension dated 11.04.2016, the defendant No.1 for himself and on behalf of the other defendant Nos.2, 3 & 4 duly acknowledged that the defendant Nos.1 to 4 shall execute the registered Deed of Sale in favour of the plaintiff after obtaining the requisite permission for sale. However, the defendant Nos.1 to 4 did not sell the said property described in Schedule-A to the plaint to the plaintiff and instead by Deed of Sale bearing Deed No.126 (i) 113 of the year 2009 executed on 17.01.2019, transferred the said Schedule-A land in favour of the defendant Nos.5 to 8. It is under such circumstances, the suit was filed seeking specific performance of the agreement to sale as well as the subsequent extensions so granted and also in the alternative seeking compensation and damages to the tune of Rs.60,01,750/- and for refund



of the advance amount with interest and compensation and damage as may be calculated by the Court in addition to compensation under Section 73 of the Indian Contract Act, 1872. The said suit was registered as Title Suit No.73/2019 before the Court of the Civil Judge at Tezpur.

3. Pursuant thereto, the defendant No.1 filed an application under Order VII Rule 11 of the Code for rejection of the plaint on the ground that the reading of the plaint did not disclose any cause of action and the suit was barred by limitation. The learned Trial Court vide an order dated 16.0.9.2023 rejected the said application filed for rejection of the plaint on the ground that perusal of the plaint disclosed a cause of action and further the suit was not barred by limitation. The learned Trial Court further observed that the plaintiff also sought for the alternative relief for refund of the advance amount. It is against the order dated 16.09.2023, the petitioner herein who is the defendant No.1 in the suit had approached this Court by filing the instant proceedings under Section 115 of the Code.

4. I have heard the learned counsels appearing on behalf of the petitioner as well as the respondent and have given due consideration to the arguments so made.

5. It is a trite principle of law that while adjudicating an application under Order VII Rule 11 of the Code the Court is only required to look into the averments of the plaint and the documents relied thereupon. Order VII Rule 11 stipulates six conditions when a plaint can be rejected, i.e. (1) where the plaint does not disclose a cause of action; or (2) where the reliefs claimed are 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; or (3) where the reliefs claimed are 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 fixed by the Court, fails to do so; or (4) where the suit appears from the statement in the plaint to be barred by any law; or (5) where the plaint is not filed in duplicate; or (6) where the plaint fails to comply with the provisions of Rule 9 of Order VII.

6. The proviso which has been added to the said provision categorically mandates that the time fixed by the Court for correction of the valuation or supply of the requisite stamp paper shall not be extended unless the Court for reasons to be recorded is satisfied that the plaintiff was prevented by any cause of any exceptional nature for correcting the valuation or supplying the requisite stamp paper as may be within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff.

7. It is relevant to take note of that from the conditions where a plaint can be rejected enumerated i.e. the conditions No.2, 3, 5 and 6 permits the Court to pass appropriate orders thereby seeking compliance before taking the drastic step for rejection of the plaint. It is only for non-compliance after being granted opportunity, the plaint can be rejected. (See ***Salem Advocate Bar Association, TN Vs. Union of India*** reported in **(2003) 1 SCC 49**, paragraph 16). However, as regards the condition No.1 and 4 i.e. where the plaint does not disclose a cause of action or where the suit appears from the statements made in the plaint to be barred by law, the Court has no other option, but to reject the plaint.

8. This Court also finds it very useful at this stage to observe that there



is a fundamental difference between a plaint not disclosing a cause of action and there is no cause of action in the suit, *inasmuch as*, in respect to a case falling within the ambit of the plaint does not disclose a cause of action, the Court is required only to read the contents of the plaint along with the documents relied upon and nothing more, and from there the Court has to arrive at an opinion that the plaint on a meaningful reading does not disclose a cause of action. On the other hand, the expression "no cause of action in the suit" it means that after the entire trial of the suit, wherein evidence etc., are taken, the Court comes to an opinion that the plaintiff has failed to make out a case for the purpose of being entitled to the reliefs as sought for. {see ***Jogeshwari Devi Vs. Shatrughan Ram*** reported in **(2007) 15 SCC 52**}.

9. The fourth condition i.e. wherein a plaint could be rejected is when upon a reading of the statements made in the plaint, it is seen that the suit is barred by any law. The same has to be only on a perusal of the plaint and nothing more. The said aspect is apparent from the use of the words, "where the suit appears from the statement of the plaint."

10. This Court also finds it very relevant to observe that the rejection of a plaint amounts to nipping at the bud a civil proceeding and as such, the said being a drastic measure, it is the requirement of law that the conditions contained under Order VII Rule 11 are strictly complied with. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat*** reported in **(2021) 9 SCC 99**, wherein the Supreme Court at paragraph 25 dealt with the aspect pertaining to Order VII Rule 11 (d) and summarized that to reject the plaint on the ground that the suit is barred by any law,



only the averments made in the plaint will have to be referred to. The Supreme Court further observed that the defence made by the defendant in the suit must not be considered while deciding the merits of the application.

11. In the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others***, reported in **(2020) 7 SCC 366**, the Supreme Court has dealt with the aspect pertaining to Order VII Rule 11 (a) and (d). It was observed that the underlying object of Order VII Rule 11 is that if in a suit, no cause of action is disclosed, or the suit is barred by law, on the reading of the plaint, the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the shame litigation so that further judicial time is not wasted.

12. This Court also finds it very relevant to take note of the judgment of the Supreme Court in ***T. Arivandandam v. T.V. Satyapal***, reported in **(1977) 4 SCC 467**, wherein the Supreme Court at paragraph 5 had duly observed that on a meaningful— not formal— reading of the plaint if it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the Code taking care to see that the grounds mentioned therein is/are fulfilled.

13. In the backdrop of the above, let this Court consider the submission of the learned counsel for the petitioner. Mr. S. K. Singh, the learned senior counsel appearing on behalf of the petitioner submitted that the plaintiff under no circumstances would be entitled to get the relief for specific performance of the agreement for sale in as much as the defendant No.1 had executed the various Deeds without a Power of



Attorney being executed by the defendant Nos.2, 3 & 4. He further submitted that the defendant Nos.2, 3 & 4 are also the co-owners of the said land and as such the question of granting the specific performance of the agreement for sale does not arise in view of the fact that the defendant Nos.2, 3 & 4 were not a party to the Agreement for Sale. He further submitted that even assuming that the Agreement for Sale was enforceable against the Defendant No.1 to 4, but perusal of the said agreement would show that it was a contingent contract in as much as the Defendant No.1 has to procure the power of attorney from the Defendant Nos.2, 3 & 4 and only thereupon the Agreement for Sale could be enforced. He submitted that in view of Sections 31 to 34 of the Indian Contract Act, 1872, the suit for specific performance cannot be decreed.

14. This Court have perused the agreement for sale which was a part of the documents relied upon in terms with Order VII Rule 14 of the Code and also having taken into account the contents of the plaint, it appears therefrom that the contents of the plaint specifically mentions that the defendant Nos.1 to 4 had offered to sale the Schedule-A plot of land to the plaintiff and had entered into Agreement for Sale and subsequent extensions. Whether the said Agreement for Sale or the subsequent extensions were entered into by the defendant No.1 on behalf of himself as well as the defendant Nos.2, 3 & 4 or whether the defendant No.1 entered into without the authority being given by the defendant Nos.2, 3 & 4 are not only aspects pertaining to defence of the Defendants but also are question of facts which can only be decided in the trial of the suit. Further to that, this Court also finds it apropos to take into consideration that the plaintiff had also sought for compensation in the circumstance

that the suit for specific performance could not be decreed in terms with the Agreement for Sale. At this stage, this Court finds it relevant also to observe that the Code does not envisage the partial rejection of the plaint. Either the plaint has to be rejected as a whole or not at all. Under such circumstances, it cannot be said that the suit does not disclose the cause of action.

15. This Court further finds it appropriate to observe that merely because the plaintiff may not be able to get a decree in a suit in his favour on the basis of the defence to be set up by the Defendants cannot be also a ground for rejection of the plaint. In that regard, this Court finds it relevant to take note of the judgment of the Supreme Court in ***Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I***, reported in (2004) 9 SCC 512, wherein the Supreme Court categorically observed that so long the claim discloses some cause of action or raises some questions to be decided by a judge, the mere fact that the cause is weak and not likely to succeed is no ground for striking it out. Paragraphs 151 and 152 of the said judgment is reproduced hereunder:

“151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In Vijai Pratap Singh v. Dukh Haran Nath Singh this Court held:

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those

allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him."

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars."

16. The contention of the learned counsel for the petitioner is that a reading of the plaint would show that the suit is barred by limitation. This Court has duly taken notice of the fact that the said suit was filed on 10.04.2019. In the plaint, categorical averments have been made more particularly at paragraph No.30 that the plaintiff was in possession of a part of the suit land from 13.05.2016 to the first week of January, 2019 and the Plaintiff was ready and willing to perform his part of the contract. Under such circumstances, it cannot be said that from a perusal of the statement made in the plaint, the suit is barred by limitation.

17. Under such circumstances, this Court finds no ground for interfering with the order passed by the learned Trial Court dated 16.09.2023 in Misc.(J) Case No.64/2022.

18. In that view of the matter, the instant revision petition stands dismissed.



19. The order dated 24.01.2024 passed by this Court stands vacated and the parties herein are directed to appear before learned Trial Court on 02.05.2024.
20. Taking into account that the instant proceedings have been unnecessarily filed and proceedings of the suit having been delayed for which this Court imposes a cost of Rs.15,000/- which shall be deposited by the defendant No.1/Petitioner herein before the Trial Court on the next date so fixed. Upon such deposit, the Plaintiff would be at liberty to file application claiming the amount. The learned Trial Court thereupon shall pass appropriate order for release of the said amount.
21. Before parting with the record, this Court observes that the observation made by the learned Trial Court in the impugned order dated 16.09.2023 passed in Misc. (J) Case No.64/2022 as well as by this Court in the instant proceedings only pertains to the observations relating to an adjudication under Order VII Rule 11 of the Code. As such the said observations shall not influence the Trial Court in adjudication of the suit.

JUDGE

Comparing Assistant