

IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Revisional Jurisdiction)

Dated: 10TH MAY, 2019

S.B.: HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CJ.

C.R.P. No. 06 of 2018

Shri Chingtop Bhutia,
aged about 44 years,
S/o Sonam Nedup Bhutia,
R/o Arithang, Gangtok,
East Sikkim.

... Revisionist

Versus

1. Shri Ran Bahadur Chettri,
aged about 51 years,
S/o Late Tika Ram Chettri,
R/o Upper Ralong, Luingsing Busty,
P.O. Ralong, South Sikkim.
2. Shri Naina Singh Chettri,
aged about 38 years,
R/o Lower Jarrong Busty,
P.O. Ravangla, South Sikkim.
3. Sub-Divisional Magistrate,
Ravangla Sub-Division,
Ravangla, South Sikkim.

... Respondents

Appearance:

Mr. Jorgay Namka, Mr. Karma Sonam Lhendup, Ms. Panila Theengh and Ms. Tashi Doma Sherpa, Advocates for the petitioner.

None for respondents No. 1 and 2.

Mr. Thinlay Dorjee Bhutia, Government Advocate for respondent No. 3.

JUDGMENT

Chief Justice

This revision has been preferred by the revisionist under Section 115 of the Code of Civil Procedure, 1908 (for short, "C.P.C.") against the order dated 09.07.2018 passed by the Civil Judge, Yangang Sub-Division, South Sikkim at Yangang, by which an application filed by the revisionist under Order VII Rule 11, C.P.C. has been rejected.

2. In this matter, notice was issued to the respondents on 21.08.2018. The case was listed on 24.09.2018. Registry submitted its report stating that respondents no. 1 and 2 had been duly served. Respondent no. 2 appeared in person before the Court on that day, but none appeared for respondent no. 1. The Court again directed to serve notice upon respondent no. 1 through the Process Server of the Civil Court, South Sikkim. In compliance to the said order, learned District & Sessions Judge, South Sikkim sent a communication to this Court informing that the notice was duly served upon the respondent no. 1. The revision was heard and admitted and was listed for final hearing on 19.11.2018. In spite of service of notice,

none appeared for respondents no. 1 and 2. The matter was fixed for ex-parte hearing and was heard ex-parte.

3. Respondent no. 1/plaintiff instituted a Title Suit No. 01 of 2018 for declaration, confirmation and recovery of possession, mandatory injunction and other consequential reliefs along with an application under Order XXXIX, Rules 1 and 2 C.P.C. The revisionist/defendant no. 1 filed written statement raising preliminary objections and gave para-wise reply. The revisionist/defendant no. 1 also filed an application under Order VII, Rule 11, C.P.C. for rejection of the plaint. In his application, the revisionist/defendant no. 1 stated that earlier in the year 2015 the plaintiff/respondent no. 1 had filed a Title Suit No. 05 of 2015 seeking declaration, confirmation and recovery of possession, mandatory injunction and other consequential reliefs along with an application under Section XXXIX, Rules 1 and 2, C.P.C. before the District Judge, South Sikkim at Namchi, and valued his suit at Rs.12,20,000/-. He also stated that the plaintiff/respondent no. 1 had deliberately concealed this fact and on that ground the application filed under Order VII, Rule 11, C.P.C. needed to be allowed and the case of the plaintiff/respondent no. 1 to be dismissed. It is also stated that as per the plaintiff's own admission, pleadings and the documents filed by him, the cause of action arose in the year 2013, and thus, the case of plaintiff is directly hit by the provisions of Order VII, Rule 11, C.P.C. and the title suit filed by him is

hopelessly barred by law of limitation. It is also stated that as per the plaintiff's own admission and pleadings, the suit is undervalued.

4. The plaintiff in his reply stated that the earlier suit filed by him was withdrawn on the ground of technical errors and the Court was pleased to allow the withdrawal with liberty to file a fresh. As far as cause of action is concerned, the plaintiff admitted the fact that the cause of action arose in the year 2013 but denied that the suit is hit by provisions of Order VII, Rule 11, C.P.C. Regarding valuation of the suit, the plaintiff stated that even in the event that the suit is found to be undervalued, the same cannot be dismissed rather the plaintiff is required to be given a chance to rectify the valuation of the suit and pay the requisite court fees.

5. Learned Civil Judge after hearing the parties, rejected the application filed by the revisionist/defendant no. 1 under Order VII, Rule 11, C.P.C. in the following manner : -

"Heard and considered.

A perusal of the petition, documents and after hearing the Ld. Counsel for the defendant No.1, it is seen that the defendant No. 1 has sought for rejection of the plaint on two grounds. The first being that it does not reveal any cause of action. This issue has been correctly addressed by the Ld. Counsel for the plaintiff wherein he has relied upon the judgment of the Hon'ble Supreme Court in **AIR 2007 SC 1247** in which the Hon'ble Supreme Court held that a plaint cannot be rejected because it does not reveal any cause of action. With respect to the second ground of the suit being barred by limitation, it has been held by the Hon'ble Courts of this country in the plethora of cases that

the question of limitation involved a mixed question of facts and law and therefore, to decide this this Court is required to go through the merits of the case.

Thus for the above reasons the petition of the defendant No. 1 stands rejected.”

6. The contention of learned counsel for the revisionist/ defendant no. 1 is that not only the pleadings made on oath by the plaintiff in his two suits i.e. Title Suit No. 05 of 2015 and Title Suit No. 01 of 2018, are similar but the reliefs sought therein are also the same. It is stated by him that the plaintiff for the purpose of court fees and pecuniary jurisdiction had valued his earlier suit i.e. Title Suit No. 05 of 2015 at Rs.12,20,000/- and thereafter he for the same schedule land and reliefs sought, for the purpose of court fees and pecuniary jurisdiction has valued his second suit, i.e. Title Suit No. 01 of 2018 at Rs.500/- on 23.04.2018, without any supporting pleadings. Thus, the court fee valued by him is insufficient. It is also contended by the learned counsel for the revisionist/ defendant no. 1 that as per the plaintiff's own admission, pleadings and documents filed by him, the cause of action arose in the year 2013, which are directly hit by the provisions of Order VII, Rule 11, C.P.C., hence the Title Suit filed by the plaintiff is barred by limitation.

7. I have considered the submissions of learned counsel for the revisionist/ defendant no. 1.

8. Order VII, Rule 11, C.P.C. deals about the rejection of plaint. The same is reproduced 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-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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."

9. From the bare reading of Order VII, Rule 11, C.P.C., it is clear that where the plaint does not disclose a cause of action, the relief claimed is undervalued, and not corrected within the time allowed by the Court, insufficiently stamped and not

rectified within the time given by the Court, barred by any law, failed to enclose the required copies and failed to comply with the provisions of Rule 9, the Court shall reject the plaint. It is, thus, clear that in such situation the Court has no other option except to reject the plaint. The power of the Court under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial, as held by the Hon'ble Supreme Court in the matter of *Saleem Bhai v. State of Maharashtra and others* : (2003) 1 SCC 557. The relevant facts which need to be looked into for deciding an application under Order VII, Rule 11, C.P.C. are the averments in the plaint.

10. In *A.B.C. Laminart (P) Ltd. v. A.P. Agencies, Salem*, (1989) 2 SCC 163, the Hon'ble Supreme Court explained the meaning of "cause of action" in the following manner:

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for

the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

11. In *Fatehji & Company & another v. L.M. Nagpal and others* : AIR 2015 SC 2301, the Hon'ble Supreme Court considered the case relating to Order VII, Rule 11, C.P.C. Few paragraphs of the judgment are reproduced below: -

"**4.** Defendants 1 to 3 filed an application under Order VII Rule 11, CPC on 10.10.1996 seeking for rejection of the plaint as barred by the law of limitation. The trial court after hearing both sides by a speaking order held that the suit is patently barred by the law of limitation and allowed the application by rejecting the plaint. The plaintiffs preferred appeal in RFA No. 350 of 1997 and the High Court by the impugned judgment allowed the appeal by setting aside the order of the Trial Court and restored the suit to file. Aggrieved by the same the defendants have preferred the present appeal. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in this suit.

x x x

8. 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.

9. 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

plaint deserved to be rejected under Order VII, Rule 11, CPC since the suit appeared from the statements in the plaint to be barred by the law of limitation. We, therefore, find no merit in these appeals and the same are accordingly dismissed. No order as to costs."

13. In *Church of North India v. Lavajibhai Ratanjibhai and others* : (2005) 10 SCC 760, the Hon'ble Apex Court held as under: -

"**39.** A plea of bar to jurisdiction of a civil court must be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety. The court may not be justified in determining the question, one way or the other, only having regard to the reliefs claimed dehors the factual averments made in the plaint. The rules of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure".

14. While deciding the application under Order VII, Rule 11, C.P.C., the Court is required to go through the plaint. The plaint must contain material facts. When the plaint does not disclose material facts giving rise to a cause of action, the application moved under Order VII, Rule 11, C.P.C. deserves to be allowed. In the present case, it appears that the learned Civil Judge did not go through the contents of the plaint and rejected the application filed under Order VII, Rule 11, C.P.C. by simply referring a judgment of the Hon'ble Supreme Court in *Prem Lala Nahata & Anr. Vs. Chandi Prasad Sikaria* : AIR 2007 SC 1247. It

appears that the learned Civil Judge understood the judgment of Hon'ble Apex Court that the plaint cannot be rejected even if the same does not reveal any cause of action. In fact, legal position is not like this. The facts of the case in the matter of *Prem Lala Nahata* (supra) were entirely different. In that case, suit was filed by the appellants for recovery of sum allegedly due to them. In that matter respondent had also filed two suits for recovery of sum allegedly due from the appellants. The said two suits were pending in the Civil Court. The appellants moved on the original side of the Calcutta High Court seeking withdrawal of two money suits to be tried with another suit on the plea that common questions of fact and law arise in the suits and it would be in the interests of justice to try and dispose of the three suits together. The High Court took the view that it would be appropriate in the interest of justice to transfer the two suits pending in the Civil Court to the original side of the High Court for being tried and disposed of along with the suit pending in the High Court. In this background the Hon'ble Supreme Court observed that an objection of misjoinder of plaintiffs or misjoinder of causes of action, is a procedural objection and it is not a bar to the entertaining of the suit or the trial and final disposal of the suit. The Supreme Court further observed that it is open to the Court to proceed with the suit notwithstanding the defect of misjoinder

of parties or misjoinder of causes of action. But facts in the present case are different. The learned Civil Judge without going through the facts mentioned in the plaint simply held that the plaint cannot be rejected because it does not reveal any cause of action. This finding of the learned Civil Judge is not correct. Order VII, Rule 11, C.P.C. clearly provides that where the plaint does not disclose a cause of action, the same **shall** be rejected.

15. I have gone through the plaint filed by the respondent no. 1/plaintiff. Pleadings do not support the reliefs. Lack cause of action. Even if the facts mentioned in the plaint are taken to be correct in their totality, in my view, the same are not sufficient to decree the suit.

16. On the question of limitation also the learned Civil Judge simply observed that the Hon'ble Courts of this country in plethora of cases held that the question of limitation involved a mixed question of facts and law and therefore, to decide this, the Court is required to go through the merits of the case. The learned Civil Judge failed to appreciate that according to the plaintiff himself the cause of action arose in the year 2013. In paragraph 33 of the plaint, the plaintiff has stated that the cause of action arose in the year 2013. Suit in question has been

instituted in the year 2018. The suit is barred by limitation and as such is hit by provisions of Order VII, Rule 11 of C.P.C.

17. In view of the above discussion, the Revision Petition is allowed. Order dated 09.07.2018 passed by the learned Civil Judge, Yangyang Sub-Division, South Sikkim at Yangang in Title Suit Case No. 01 of 2018 (*Shri Ran Bahadur Chettri vs. Shri Chintup Bhutia & Ors.*) is set aside. The application moved by revisionist/ defendant no. 1 under Order VII, Rule 11, C.P.C. is allowed. Plaint filed by the plaintiff is rejected.

Chief Justice

10.05.2019

Index: Yes
Internet: Yes

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