

(2019) 05 MAN CK 0003

In the Manipur High Court

Case No : Civil Revision Petition (CRP ART. 227) No. 14 Of 2016, Miscellaneous Cases No. 918 Of 2015, Original Suit No. 63 Of 2014

Andy Mangsatabam

APPELLANT

Vs

Thangjam Shyamkishore Singh

RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2019) 05 MAN CK 0003

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : M. Rarry, Ng. Premkumar

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri M. Rarry, learned Advocate appearing for the petitioner and no advocate is present for the respondents nor are they themselves present in the court.

[2] The instant civil revision is preferred against the order dated 04.11.2016 passed by the learned Civil Judge, Senior Division, Imphal West in Judicial Misc. Case No. 918 of 2015.

[3.1] According to the petitioner, he is the owner in possession of three homestead lands at Changangei, Imphal West which were acquired by him by executing three sale deeds dated 12.06.2013 and 19.06.2013. After the said homestead lands being acquired by him, three Jamabandis were issued by the revenue authority in his favour and accordingly, he applied for demarcation and identification of the boundary of said three homestead lands by way of an application filed before the revenue authority.

[3.2] The respondent Nos.1 and 2 are father and son who were occupying a

Government land under C.S Dag No.1246 without any authority. The respondent No.1 filed a writ petition being WP(C) No.156 of 2014 wherein this Court vide its order dated 06.03.2014 observed that although the respondent was not the owner of the land, he was running a katcha fast food stall on Government land and he was granted five weeks time to vacate the same. Since the respondent No.1 failed to vacate the Government land, an eviction case No.2 of 2014 was initiated against him under the provisions of the Manipur Public Premises (Eviction of Unauthorized Occupant) Act, 1978. Despite an order dated 19-07-2014 being passed by the learned SDO, Patsoi, the respondents continued to occupy the said land. When the petitioner started construction of the boundary wall, the respondents raised an objection without any rights thereof and erected hoardings on the suit lands of the petitioner. Many attempts made by the petitioner and his employees to remove the hoardings, were thwarted by them with threats of assaulting and killing, for which a complaint was lodged with the police. According to the petitioner, it is an admitted position on record that the respondents are the unauthorized and unlawful occupants of the land under C.S Dag No.1246 which is a Government land and that they have no right to make any claim or objection to the enjoyment of the rights of title and ownership appurtenant to the land under C.S Dag No.1247 by the petitioner.

[3.3] On 18-11-2014 the petitioner filed a suit being O.S No.63 of 2014 for declaration and permanent injunction against the respondents wherein a joint written statement-cum-counter claim dated 19.12.2014 was filed by the respondents admitting that the petitioner is the owner of the suit land under C.S No.1247 measuring an area of 0.24 acre, to which the petitioner filed a replication. In the meantime, the respondents along with their family members filed a suit being O.S No.67 of 2014 against the petitioner praying for a decree declaring that their rights and title in the use and enjoyment of the approach road as easementary right being absolutely indefeasible in respect of suit land under C.S Dag. No.1247 which was dismissed on 19.05.2015 by allowing the Judl. Misc. Case No.538 of 2014 filed by the petitioner.

[3.4] The respondents filed an application being Judl. Misc. Case No.918 of 2015 for amendment of their Joint Written Statement-cum-Counter Claim which was objected to by the petitioner on the ground that admission made by the respondents in their written statement could not be allowed to be amended. The learned Civil Judge, Senior Division, Imphal West vide its order dated 04-01-2016 allowed it subject to payment of Rs.2,000/-(Two thousand) only as costs. Being aggrieved by it, the instant revision petition has been filed by the petitioner.

[4] On 22-04-2016 when the civil revision petition came up for consideration, this Court issued notice to the respondents. Although Shri N. Surendrajit, learned Advocate had entered appearance on behalf of respondents, Shri P. Tamphamani, Advocate appeared on 17-08-2016 and 26-08-2016 on his behalf and was granted two weeks time each by this court for filing affidavit-in-opposition.

However, on 16-09-2016 Shri N. Surendrajit submitted that he would like to file an application for determination which he did by moving an application being MC [CRP(C.R.P Art.227)] No.15 of 2016 which was allowed by this Court on 16.11.2016 discharging him from being the counsel for the respondents and accordingly, Court notice was directed to be issued to the respondents. On 30.11.2016 this Court passed an order to the effect that since the respondents had refused to accept the notice as per the office reports, they would be deemed to have been served with the notice and in order to give an opportunity, the matter was directed to be listed on 16.12.2016. Shri Ng. Premkumar learned Advocate submitted that he had entered appearance on behalf of respondents and prayed that the matter be listed after vacation. On 16.02.2017 when the matter was listed, none was present for the respondents and accordingly, the matter was directed to be listed on 24.02.2017 in order to give one more opportunity to the respondents. On 05.09.2018 this Court passed an order observing that despite repeated opportunities being given to the respondents, none was present for them. From the aforesaid proceedings, it is seen that the learned counsel appearing for the respondents stopped appearing for them and this factum was recorded in the proceedings.

[5] Accordingly, on 22.05.2019 this Court after hearing the arguments advanced by the learned counsel appearing for the petitioner, reserved the judgment and order. During the course of hearing, it has been submitted by Shri M. Rarry, learned counsel appearing for the petitioner that since the suit being O.S No.67 of 2014 having been dismissed by the Civil Judge, Senior Division, Manipur East vide order dated 19.05.2015, the application for amendment of the written statement-cum-counter claim could not have been allowed by the learned Civil Judge, Senior Division, Imphal West. The order dated 19.05.2015 passed by the learned Civil Judge, Senior Division No.1, Manipur East reads as under:

"COPY OF THE ORDER PASSED ON 19-5-2015

The suit is put up today for disposal due to consideration of the court on account of whether the plaintiffs have anything to say as their leave to sue, in a representative capacity was rejected, the plaintiffs were granted sometime vide order dt 14-5-2015 in J.M.Case No. 538/2014.

However after hearing the Id. Counsel of the plaintiffs and defendants and checking the commentaries related to the provision as discussed U(O) I R.8 of the C.P.C. this suit cannot be retained and hence this O.S. No. 67 of 2014 stands dismissed."

[6] From the materials on record and in particular, the order dated 06-03-2014 passed by this court, it is seen that there is no dispute between the parties that the respondent No.1 was admittedly running a fast food stall on the Government land and that he was granted five weeks time to vacate the same. It has further been held therein that in case he failed to vacate the Government land, the authorities were granted liberty to cause necessary eviction from the said land.

Since the respondent No.1 having failed to vacate the land, The SDO, Patsoi issued an order dated 19-07-2014 directing that he be evicted from the land under C.S dag No.1246. In other words, the respondent No.1 is an authorized occupant of the said land. The suit being O.S No.63 of 2014 was filed by the petitioner for declaration and permanent injunction on the ground that he is the owner of three homestead lands including the one under C.S Dag No.1247. In the written statement-cum-counter claim filed by the respondents, it has been stated that the land under C.S Dag No.1247 was purchased by the petitioner from Shri L. Dhiren Singh, because of which the petitioner's name was recorded in the Jamabandi vide order dated 24-06-2014. Moreover, the land under C.S Dag No.1246 is a Government land on which he was running a fast food stall. The respondents along with their family members filed a suit being O.S No.67 of 2014 claiming their right and title in the use and enjoyment of the approach road which was dismissed vide order dated 19-05-2015.

[7] The Judl. Misc. Case No.918 of 2015 was filed by the respondents praying for amendment of the written statement-cum-counter claim and the proposed amendment reads:

"PROPOSED AMENDMENT:

i) That the words and figures " Schedule X" appearing in between the words and figures "..... it is morefully described in " and "appended to their written statement" in the last sentence of Para No.1.9 of the written statement-cum-counter claim be replaced by the words and figures "Schedule - Y".

ii) That the words and figures "Schedule-Y" appearing in between the words and figures ".....is morefully described in " and " appended to their written statement" in the last sentence of Para No.1.12 of the written statement-cum-counter claim be replaced by the words and figures "

Schedule-X".

iii) That the following Para be inserted as Para No.1.19 in the joint Written Statement-cum-Counter Claim.

"1.19 That the Defendants humbly submits that the land covered by C.S Dag No.1247 is bigger than 0.24 acre on the spot though it has been recorded in the relevant land records as 0.24 acre."

[8] The said application was allowed vide order dated 04-11-2016 passed by the Civil Judge, Senior Division, Imphal West which is being impugned herein. It may be noted that Order VI Rule 17 of the CPC provides that the court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just and that such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. The amendment of the written statement is generally permissible but some of the principles to be followed by the court while considering the application for amendment of pleading, in short, are as under:

- (a) All amendments will be generally permissible when they are necessary for determination of the real controversy in the suit;
- (b) All the same, substitution of one cause of action or the nature or the claim for another in the original plaint or change of the subject matter of or controversy in the suit is not permissible;
- (c) Introduction by amendment of inconsistent or contradictory allegations in negation of the admitted position on facts or mutually destructive allegations of facts are also impermissible though inconsistent pleas on the admitted position can be introduced by way of amendment.

The learned Civil Judge, Senior Division, while passing the impugned order, has relied upon the decision rendered by the Hon'ble Supreme Court in *Rajesh Kumar Aggarwal & ors. Vs. K.K. Modi & ors.*, (2006) 4 SCC 385. There is no and can be no dispute about the law laid down by the Hon'ble Supreme Court therein. But the facts of that case are not identical with that of the present case. In the present case, the respondents admitted that the land under C.S Dag No.1247 was purchased by the petitioner and accordingly, his name was recorded in the Jamabandi. It is nowhere averred in the written statement by the respondents that they are the owners of the land under C.S Dag No.1247 or for that matter, the land under C.S Dag No.1246 being a Government land. The area of the said land as admitted as per averments made in their written statement was 0.24 but after the land acquisition proceedings being initiated for widening of National Highway-150, a portion of the land measuring 0.0839 acre had been acquired by the Government leaving the area of the land as 0.1561 acre. That being the position, the contention of the respondents was that Shri A. Manihar Singh had no authority to execute a sale deed in favour of Shri L. Dhiren Singh in respect of 0.24 acre of land and consequently, the sale executed by Shri L. Dhiren Singh in favour of the petitioner was void ab initio. But on the contrary, they would, by this amendment, seek a change in the schedule of the suit land, the correctness of which is quite evident from the documents. In other words, the respondents would like to amend their written statement by contending that the area of the land covered under C.S No.1247 was bigger than 0.24 on the spot though it had been recorded in the relevant land records as 0.24 acre. Their stand was inconsistent with the result that it was not possible for the petitioner to understand their case. The subject matter in issue in the suit relates to the legality of the sale deed dated 16-06-2012 executed by Shri L. Dhiren Singh in favour of the petitioner in respect of the land under C.S Dag No.1247 measuring an area of 0.24 acre. The contention of the respondents appears to be not based on any material but hypothetical and therefore, to allow the amendment of the written statement will amount to allowing them to change their admitted stand as regards the schedule of the suit land and in particular, the area thereof. In other words, the amendment sought for by the respondents shall not be necessary at all for the purpose of determining the real question in controversy between the parties. This court is not concerned with the merits of the suit and

does not express any opinion on the merits of the rival claims but one aspect which needs to be noted, is that on their own averments made in the written statement, the respondents are not the owners of the land under C.S Dag No.1246 which is a Government land nor do they claim that they are the owners of the land under C.S Dag No.1247 and moreover, the suit being O.S No.67 of 2017 filed by them claiming their right and title in the use and enjoyment of the approach road, had already been dismissed by the learned Civil Judge. There is no any material on record to show that an appeal has been preferred against the dismissal of the said suit. In view of the above, this court is of the view that the learned Civil Judge, Senior Division has committed an error and that there is an infirmity in the impugned order, passed by the learned Civil Judge, Senior Division, Imphal west, which is liable to be set aside.

[9] In view of the above and for the reasons stated hereinabove, the instant civil revision petition is allowed and consequently, the order dated 04-01-2016 passed by the Civil Judge, Senior Division, Imphal West in Judl. Misc. Case No. 918 of 2015 [Ref: O.S No.63 of 2014] is quashed and set aside.