

(2023) 06 SIK CK 0034

In the Sikkim High Court

Case No : Civil Revision Petition No. 04 Of 2023

Chewang Lhamu Bhutia

APPELLANT

Vs

M/S Yama Enterprises Private Limited

RESPONDENT

Date of Decision : 16-06-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 2(2), 115, 115(1), 151
Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(b), Order 7 Rule 11(d)
Transfer Of Property Act, 1882 — Section 122, 123

Citation : (2023) 06 SIK CK 0034

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Tej Bahadur Thapa, S. S. Hamal, Khem Raj Sapkota, Chandrika M. Karki, Pradeep Sharma, Anirudh Gupta, Anmol Prasad, Sagar Chettri, Thupden Youngda

Final Decision : Dismissed

Judgement

Meenakshi Madan Rai, J

1. The Court of Learned District Judge, Special Division –I, at Gangtok, vide its Order, dated 17-04-2023, in Title Suit No.26 of 2022 (M/s Yama Enterprises Private Ltd. vs. Chewang Lhamu Bhutia), rejected an application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter, the "CPC"), filed by the Defendant, the Petitioner/Revisionist herein. Aggrieved thereof, the Revisionist is before this Court assailing the Order.

2. Learned Senior Counsel for the Revisionist, while specifically drawing the attention of this Court, to Paragraph 6 of the impugned Order submitted that, the Learned Trial Court inter alia recorded therein that "..... The Plaintiff is claiming the suit property on the basis of the said alleged Gift Deed document. But by the nature of the alleged Gift Deed, as the same has been attested by only one witness, Annexure-P6 is an invalid document." That, the Learned Trial

Court despite being conscious of the submissions pertaining to the Gift Deed, failed to discuss the validity or otherwise of the Gift Deed. That, at Paragraph 20, of the impugned Order, while rejecting the Petition, the Learned Trial Court only addressed the question of limitation by observing that, on reading the entire contents of the Plaint, the issues involved in the case were found to be not purely on questions of law but also on questions of fact, which required evidence to be adduced. It was urged by Learned Senior Counsel that the entire case pivots around the Gift Deed whose validity is suspect, for the reason that, the mandate of law has not been complied with. Walking this Court through the provisions of Sections 122 and 123 of the Transfer of Property Act, 1882 (hereinafter, the "TP Act"), it was canvassed that the specific requirement of the statute is of two attesting witnesses to the transaction/gift. That, a mere perusal of the Gift Deed document relied on by the Plaintiff/Respondent establishes that there was only one attesting witness to the alleged Gift Deed, which therefore fails to comply with the mandate of law. That, clever drafting has created an illusion of cause of action where there is none. To augment his submissions, Learned Senior Counsel relied on *Frost International Limited vs. Milan Developers and Builders Private Limited and Another* (2022) 8 SCC 633, where the Supreme Court while considering an application under Order VII Rule 11 of the CPC observed that, what is required to be decided is whether the Plaint discloses a real cause of action or something purely illusory. Reliance was also placed on *Daulat Singh (Dead) through Legal Representatives vs. State of Rajasthan and Others* (2021) 3 SCC 459, wherein the Supreme Court while discussing the provisions of Sections 122 and 123 of the TP Act held that, Section 123 of the TP Act provides that, for a gift of immovable property to be valid, the transfer must be effectuated by means of a registered instrument, bearing the signature of the donor and attested by at least two witnesses. That, the Learned Trial Court therefore failed to exercise the jurisdiction vested in it by law, besides, having acted illegally in the exercise of jurisdiction and with material irregularity, by ignoring the documents on record, which made it abundantly clear that not only was any cause of action not disclosed in the Title Suit but it was also barred by limitation. It was further contended by Learned Senior Counsel that no error arises in invoking the provisions of Section 115 of the CPC, the revisional jurisdiction of this Court, against the Respondent, as had the Petition under Order VII Rule 11 of the CPC been allowed by the Learned Trial Court, the dismissal of the Plaint would have resulted in a Decree in terms of Section 2(2) of the CPC, in favour of the Revisionist. Hence for the aforesaid reasons, the impugned Order be set aside.

3. Per contra, stridently repudiating the arguments advanced by Learned Senior Counsel for the Revisionist, Learned Senior Counsel for the Respondent urged that, before the Learned Trial Court the grounds raised in the Order VII Rule 11 of the CPC Petition for rejection of Plaint were on limitation, valuation and non-transfer of possession of the concerned property. No grounds pertaining to the provisions of Sections 122 and 123 of the TP Act were agitated and the Gift Deed

was not the subject of dispute in the said Petition. The Revision Petition before this Court also does not reveal such grounds. That, it is being raised for the first time before this Court only by way of verbal arguments. Learned Senior Counsel for the Respondent relied on *Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others* (2020) 7 SCC 366 to urge that the power conferred on the Court to terminate a civil action is a drastic one, and the conditions enumerated in Order VII Rule 11 of the CPC are required to be strictly adhered to for such a step. That apart, it was also contended that as required by law a second witness had attested the Gift Deed and not only one witness as erroneously argued by Learned Senior Counsel for the Revisionist. That, the reverse page of the Gift Deed document is revelatory of this circumstance. Hence, the Petition under Section 115 of the CPC filed by the Revisionist be rejected and the matter be allowed to go into trial.

4. In rebuttal, Learned Senior Counsel for the Revisionist submitted that although no averment appears in the Revision Petition with regard to the Gift Deed, it had been mentioned therein that other grounds would be urged at the time of hearing, and as the question involves a requirement of law, there is no estoppel against statute. That, in *Dahiben* (supra), the Supreme Court has held that the remedy under Order VII Rule 11 of the CPC is an independent special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record the evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in the provision. In light of the arguments advanced, the impugned Order of the Learned Trial Court deserves to be set aside and the Plaint dismissed.

5. I have heard in extenso, the rival contentions advanced by Learned Senior Counsel, at the bar and perused all pleadings and documents.

(i) To comprehend the matter for the present purposes, it is essential to briefly state the facts of the case. The Plaintiff Company/Respondent herein, claims to be in absolute ownership and legal possession of the suit building, by virtue of a registered Gift Deed, dated 02-06-2009, executed in its favour by one late Thukchuk Lachungpa. That, the Defendant/Revisionist has forcibly and illegally occupied and taken control of the suit property to the detriment and loss of the Respondent. Hence, the suit for declaration, recovery of possession and consequential reliefs filed by the Respondent.

(ii) The Revisionist had sought rejection of the Plaint by invoking the provisions of Order VII Rule 11 (a), (b) and (d) read with Section 151 of the CPC.

(iii) Order VII Rule 11 of the CPC provides that the Plaint shall be rejected on the following grounds; (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); (d) where the Suit appears from the statement in the plaint to be

barred by any law, the grounds under Order VII Rule 11 (b) of the CPC were not pressed.

(iv) It is now no more *res integra* that the High Court under Section 115 of the CPC cannot interfere with every order of a Court sub-ordinate to it, such interference being envisaged only if the requirements of Sub-section 1 of Section 115 of the CPC are satisfied. The amendment Act 46 of 1999 has restricted the power of revision to those cases where the impugned order would have finally disposed of the suit or the proceeding if it had been made in favour of the party applying for the revision. In the instant matter, had the Petition under Order VII Rule 11 of the CPC been decided in favour of the Revisionist the matter would have been finally disposed of. Hence, no error arises in the Revisionist invoking the provisions of Section 115 of the CPC before this Court.

(v) That, having been said, it may relevantly be noticed that in *Dahiben (supra)*, the Trial Court had dismissed the Suit on grounds that it was barred by limitation and allowed the application under Order VII Rule 11(d) of the CPC. The High Court in First Appeal affirmed the findings of the Trial Court and held that the suit was barred by limitation. Before the Supreme Court, the Order of the Division Bench of the High Court was challenged. The Supreme Court upholding the concurrent findings of the Courts below, observed that the suit filed by the Plaintiffs was clearly an abuse of the process of the Court and bereft of any merit.

(vi) The facts and circumstances therein are clearly distinguishable from the matter at hand. In *Dahiben (supra)*, the agricultural land in question, which was in the ownership of the Plaintiffs was under restrictive tenure as per Section 73-AA of the Land Revenue Code. The Plaintiffs filed an application in 2008 before the Collector to obtain permission to sell the suit land to Respondent No.1-Defendant No.1, stating that they had no objection to the sale of the suit property. The Collector after carrying out verification of the title of the Plaintiffs, passed an order in 2009, permitting sale of the property as per the 'jantri' issued by the State Government @ ₹ 2,000/-(Rupees two thousand) only, per square metre, which would work out to ₹ 1,74,02,000/-(Rupees one crore, seventy four lakhs and two thousand) only. The Collector granted permission for the sale, subject to the terms and conditions contained in Section 73-AA of the Land Revenue Code. It was stipulated that the purchaser shall make the payment by cheque, and reference of the payment shall be made in the sale deed. The Plaintiffs then sold the suit property to Respondent No.1 vide the registered sale deed, dated 02-07-2009, who in turn issued 36 cheques of ₹ 1,74,02,000/- (Rupees one crore, seventy four lakhs and two thousand) only, towards payment of the sale consideration, the details of which were set out in the registered sale deed. The Plaintiffs in the sale deed expressly and unequivocally acknowledged that the consideration was paid by Defendant No.1-Respondent No.1 to the plaintiffs, through cheques, which were issued prior to the execution of the sale deed, during the period 07-07-2008 to 02-07-2009. It was further stated that the vendors would not raise any dispute in future denying receipt of the sale

price or alleging receipt of only a part amount and if they did so "then, the same would be void by the sale deed". Respondent No.1 subsequently sold the said property to the Respondents No.2 and 3, vide registered sale deed, dated 01-04-2013, for a sale consideration of ₹ 2,01,00,000/- (Rupees two crore and one lakh) only. The plaintiffs on 15-12-2014, vide the special suit against the Respondent No.1, impleading the subsequent purchasers, Respondents No.2 and 3 as Defendants, prayed that the sale deed, dated 02-07-2009 be cancelled and declared as illegal, void and not binding on the ground that the sale consideration fixed by the Collector, had not been paid in entirety by the Respondent No.1. That, an amount of ₹ 40,000/- (Rupees forty thousand) only, was paid to them and the remaining 31 cheques were false. That, the limitation commenced from 21-11-2014, when they obtained a copy of the index of the sale deed dated 02-07-2009 and discovered alleged fraud. The Respondents No.2 and 3 filed an application for rejection of the Plaint as the suit was barred by limitation and no cause of action has been disclosed in the Plaint. The Trial Court held that the period of limitation for filing the suit was three years from the date of the execution of the sale deed, dated 02-07-2009, whereas the suit was only filed on 15-12-2014. Hence, the suit was barred by limitation. Besides, before purchasing the suit property, Respondents No.2 and 3 had issued public notice on 14-08-2012 to which the Plaintiff did not raise any objection.

(vii) The Supreme Court elaborately discussed the law applicable for deciding an application under Order VII Rule 11 of the CPC. It was inter alia observed that the remedy under Order VII Rule 11 of the CPC is an independent and special remedy, wherein the Court is empowered to summarily dismiss the suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. That, the underlying object of Order VII Rule 11(a) of the CPC is that if in a Suit, no cause of action is disclosed, or the suit is barred by limitation, under Order VII Rule 11(d) of the CPC, the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit, to prevent wastage of judicial time. That, the documents filed along with the plaint are required to be taken into consideration for deciding the application under Order VII Rule 11(a) of the CPC. When a document referred to in the plaint, forms the basis of the plaint it should be treated as part of the Plaint. It was further held that the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out. At Paragraph 23.10, it was observed that "At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant and cannot be adverted to, or taken into consideration." That, the test for exercising the power under Order VII Rule 11 of the CPC is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. That, "cause of action" means every fact which would be

necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts which are necessary for the plaintiff to prove, in order to entitle him to the reliefs claimed in the suit. The plaintiff should disclose the real cause of action and not something illusory. That, should clever drafting create an illusion of a cause of action, it should be nipped at the bud so that bogus litigation will end at the earliest stage.

6. On the edifice of the principles enunciated hereinabove, on careful consideration of the averments, documents and the submissions before this Court, it is evident that in the first instance as pointed out by Learned Senior Counsel for the Respondent, the question of Gift Deed was never raised before the Learned Trial Court or even in the averments made before this Court. Be that as it may, the Revisionist asserts that the mandate of law has not been complied with in view of the Gift Deed not having been attested by two witnesses. In my considered opinion, the Court at this stage cannot consider the submission of the Revisionist as gospel truth, and reject the Complaint as the Gift Deed is required to be tested, in terms of not only Section 123 of the TP Act but the Indian Evidence Act, 1872 as also the Sikkim State Rules, Registration of Document, 1930.

(i) The Learned Trial Court while considering the Order VII Rule 11 of the CPC Petition has correctly held that from the averments in the Complaint and the documents relied on by the Respondent, it is not ipso facto revealed that the suit is barred by limitation. That, the question of limitation in the case is a mixed question of law and facts towards which oral evidence and documentary proof are required and have to be proved by the parties.

7. In light of the foregoing discussions the Suit cannot be said to be manifestly vexatious or without merit, lacking cause of action or deserving a dismissal under the Sub-sections of Order VII Rule 11 of the CPC, invoked by the Petitioner.

8. The impugned Order of the Learned Trial Court is accordingly upheld.

9. Revision Petition stands dismissed and disposed of.

10. I.A. No.01 of 2023 stands disposed of accordingly.

11. Copy of this Order be forwarded to the Learned Trial Court for information along with its records.