
(1954) 07 GAU CK 0016
In the Gauhati High Court

Debendra Chandra Palit

APPELLANT

Vs

Girindra Kumar Pal

RESPONDENT

Date of Decision : 07-07-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : AIR 1954 Guw 111

Hon'ble Judges : Sarjoo Prosad, C.J.;Deka, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sarjoo Prosad, C.J.—This application in revision is directed against an order of the learned Subordinate Judge, Silchar, dated 6-5-1954, passed in Title Suit No. 8 of 1954. The order is in the following terms:

The petition for staying the proceeding be put up after filing of Written Statement for which 31-5-54 is hereby fixed as the last date.

It is obvious from the order itself that it is not a final order at all and does not dispose of the application u/s 10, Civil P.C. filed by the petitioner for stay of the suit.

2. The petitioner contends that the learned Subordinate Judge had no jurisdiction to compel the petitioner to file his written statement in the suit in question before any order for stay of the suit could be made by the Court. He alleges that having regard to the pleadings of the plaintiff in this suit and the pleadings of the parties in an earlier suit instituted by the petitioner, namely, Title. Suit- No. 59 of 1953, it was incumbent on the Court to stay the suit u/s 10, Civil P.C. The relevant facts may be briefly stated thus.

2a It appears that the petitioner is the owner of some tea estate which he purchased for a certain sum of money. For making the purchase, he appears to have borrowed a sum of Rs. 40,000/- from a bank called the Sylhet Industrial

Bank on the footing of a mortgage bond, dated 3-12-45. This Sylhet Industrial Bank was later amalgamated with another bank called the Mahaluxmi Bank Limited, and the property purchased by the petitioner, namely, the Saraswati Tea Estate, was admittedly the subject of the mortgage in question. The opposite party who is the plaintiff in Title Suit No. 8 of 1954, obtained an assignment of the mortgage bond on 3-12-52. The case of the petitioner is that this assignment, though in the name of the opposite party, was really on behalf of the petitioner and, as such, the petitioner was entitled to the benefit of the assignment except to the extent of Rs. 9000/-, which was the consideration laid on account of the transfer of the mortgage bond in question.

On the admitted case of the petitioner, there appears to have been some transaction of loan between the petitioner and the opposite party, and on the basis of that, the opposite party instituted a Money Suit against the petitioner. These loans seem to have been advanced on the security of standing crops in the tea estate in question. In the plaint of that Money Suit, there was a reference to this mortgage under which the opposite party claims. The petitioner thereafter instituted Title Suit No. 59 of 1953 on 15-9-53 for a declaration that he was the real beneficiary in respect of the assignment of the mortgage bond aforesaid, and in that suit the opposite party who was the defendant, filed a Written Statement contesting the claim of the plaintiff.

The parties to that suit and in the present suit, are, of course, the same and the two suits are pending before the same learned Subordinate Judge. The Mortgage Suit in which the order in question has been passed was instituted by the opposite party about six months later. In these circumstances, it is urged before us that there should have been stay of the subsequent suit u/s 10, Civil P.C. As I have said, the Court below has not passed any final orders so far disposing of the application of the petitioner. The order is a mere interlocutory order and it was open to the Court to insist that the written statement should be filed by the petitioner before the question whether the suit should be stayed u/s 10 of the Code could be decided. The Court had to find out whether the matters in issue in this subsequent suit were directly and substantially in issue in the previously instituted suit of the petitioner.

As a matter of fact, the previous suit is a title suit in which the only question is-- whether or not the petitioner is the real beneficiary under the assignment of the mortgage obtained in the name of the opposite party on 3-12-52, whereas in the mortgage suit, the issues would relate to the validity or otherwise of the mortgage, though the other question also, namely, whether the opposite party is entitled to sue on the foot of the mortgage on the basis of the assignment, might arise.

Mr. Deb on behalf of the opposite party has contended that the question of paramount title could not be gone into in the mortgage suit in question and even, as benamidar, the opposite party would be entitled to institute the suit and obtain a decree. There may be substance in this contention, but these questions

cannot be finally decided by us at this stage. It is impossible for us to interfere with the interlocutory order passed by the Court in revision when, as a matter of fact, the Court has not yet disposed of the application u/s 10 of the Code.

3. Mr. Ghose on behalf of the petitioner has relied upon a decision of the Calcutta High Court in - Durgaprasad Vs. Kantichandra Mukerji, in support of the contention that it was wrong on the part of the learned Subordinate Judge to insist upon the filing of a written statement in the case before the question u/s 10, Civil P.C. could be decided. The above decision stands on its own facts and arose in an appeal from an order passed by a single Judge of the Court sitting on the original side. That decision, therefore, cannot be cited as an authority for the proposition that in no case the Court is entitled to insist that the written statement should be filed and the issues settled before the matter u/s 10 of the Code could be stayed by the Court.

The other case on which reliance has been placed on behalf of the petitioner, namely, the decision in -- Jai Hind Iron Mart Vs. Tulsiram Bhagwandas, is also not in point, because there the matters in the two suits arose out of the same contract and were really parallel suits. In fact, it would be pre-mature for us at this stage to make any final observation on this point, because the trial Court itself has not passed final orders thereon.

Mr. Ghose has also urged in support of his petition that the filing of a written statement would be very costly and would be harassing to the petitioner. Therefore, the matter should be disposed of without any written statement being filed. Some allegation has been made to support this contention of the petitioner, which is disputed by the opposite party. In any case, if there was any substance in the point, it was open to Mr. Ghose's client to place the matter before the learned Subordinate Judge and ask him to revise his order, if at all necessary in the light of those facts. The learned Subordinate Judge was more competent to know about the actual facts underlying those allegations and to come to a decision on that point. It was, therefore, quite inappropriate to rush to this Court and prefer an application against the order of the learned Subordinate Judge on materials on which the learned Subordinate Judge himself was never asked or invited to express any opinion.

4. The application, in our opinion, is misconceived. It is accordingly dismissed and the Rule is discharged. The opposite party is entitled to his costs. Hearing fee Rs. 50/-.

Deka, J.

5. I agree.