

(2023) 10 SIK CK 0020

In the Sikkim High Court

Case No : Civil Revision Petition No. 02 Of 2023

District Collector, South Sikkim, Namchi & Ors

APPELLANT

Vs

Raj Balam Prasad

RESPONDENT

Date of Decision : 10-10-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section 9, 151
Limitation Act, 1963 — Section 3
Sikkim Allotment Of House Sites And Construction Of Building (Regulation And Control) Act, 1985 — Section 12
Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d)
Limitation Act, 1963 — Article 58
Constitution Of India, 1950 — Article 371F(k)

Citation : (2023) 10 SIK CK 0020

Hon'ble Judges : Bhaskar Raj Pradhan, J

Bench : Single Bench

Advocate : Dr. Doma T. Bhutia, S.K. Chettri, Shakil Raj Karki, N. Rai, Tara Devi Chettri

Final Decision : Dismissed

Judgement

Bhaskar Raj Pradhan, J

1. The respondent, Raj Balam Prasad (plaintiff) filed Title Suit No. 11 of 2021 against the revisionist nos. 1 to 3 (defendants). It was the respondent's case that plot no.42 with an area of 0.0200 hectares (suit land) was provided to his father by late Zigmee Wangyal Lassopa in the year 1985 and after the demise of his father the suit land came to his possession with the consent of Jolly Wangyal Lassopa, son of late Zigmee Wangyal Lassopa. The respondent constructed two storied RCC structured in the suit land with the consent of Jolly Wangyal Lassopa who is the title holder of the suit land. The two storied RCC structure is in the respondent's possession and occupation but there is no change in ownership and title of the suit land as it is a Bhutia/Lepcha land. When the respondent

constructed the two storied RCC structure no one including the Government objected to it and the Power Department in fact provided electricity supply. During 2008 the Town Planner blamed the respondent that he had constructed the two storied RCC structure on the suit land by encroaching State Government drain from west side of the suit land. The respondent requested the Town Planner to employ an Amin to verify the status of the suit land but it was not considered. During 2016 the Town Planner again raised the same allegation. The Town Planner also objected on the ground that the RCC structure was built without any approved blue print plan. The respondent made applications for regularization of the encroached portion, if any, but to no avail. On 10.09.2021 the revisionist no.2 (defendant no.2) i.e. the Principal Chief Town Planner issued a demolition notice to demolish the structure within 15 days of the issuance of the demolition notice. In such circumstances, the respondent approached the Court of the learned Civil Judge seeking the following substantial reliefs:

“(a) A decree with declaration and confirmation that the plaintiff has not encroached any portion of Government land as alleged by the defendants while having his RCC structure on plot no.42.

(b) A decree with the declaration that the demolition order dated 10.09.2021 providing 15 days time to the plaintiff is unjust, illegal and causing harassment to the plaintiff and hence to be rejected.” (Sic)

2. During the trial the revisionists filed a petition under Order 7 Rule 11(d), sections 9 and 151 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint. The petition was filed on the following grounds:-

(i) The jurisdiction of the Civil Court is barred by the Sikkim Allotment of House Sites and Construction of Building (Regulation and Control) Act, 1985 (the Act of 1985).

(ii) Section 9 of the CPC bars the filing of the plaint.

(iii) The plaint is also barred by Revenue Order No.1.

3. The petition under Order 7 Rule 11 (d) of the CPC was heard by the learned Civil Judge and rejected. During the hearing, as reflected in the impugned order, no plea of limitation was raised by the revisionists and therefore, not considered.

4. The learned Additional Advocate General for the revisionists submitted that the suit is barred by Article 58 of the Limitation Act, 1963 as the right to sue first accrued in favour of the respondent, as per paragraph 5 of the plaint, in the year 2008 itself. The learned Additional Advocate General also relied upon the demolition notice dated 10.09.2021 which records the issuance of another demolition notice on 11.03.2011. It is thus argued that if this Court were to consider either of the two dates i.e. 2008 and 11.03.2011 the suit which was filed only in April, 2021 was grossly barred by time as the three year period of limitation under Article 58 of the Limitation Act, 1963 had already expired. On the objection raised by the learned Senior Counsel for the respondent that the

ground of limitation was not taken either in the petition or during its hearing, the learned Additional Advocate General relied upon the judgment of this Court *Shri Chabilal Khatiwada vs. Shri Durga Prasad Rai and Ors.* 2012 SCC OnLine SIKK 26 to submit that Section 3 of the Limitation Act, 1963 is pre-emptory and a duty is cast upon the Court to take notice of this provision and give effect to it even if not set out in the pleadings. She also relied upon the judgment of the Supreme Court in *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) & Ors.* (2020) 7 SCC 366.

5. The learned Additional Advocate General also reiterated the arguments raised in the petition under Order 7 Rule 11 of the CPC.

6. Mr. N. Rai, learned Senior Counsel of the respondent submitted that the plea of limitation had not been taken either in the petition or during its hearing and therefore, it cannot be said that the impugned order has been passed by the learned Civil Judge in exercise of a jurisdiction not vested in its law, or that she has failed to exercise jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. The learned Senior Counsel also submitted that the petition had been filed on the wrong notion that the Act of 1985 barred the respondent from approaching the Civil Court. It was submitted that neither Revenue Order No.1 nor Section 9 of the CPC bars or prevents the respondent from approaching the Civil Court for the prayers as prayed for in the plaint. The learned counsel relied upon the judgment of the Supreme Court in *P.V. Guru Raj Reddy & Anr. vs. P. Neeradha Reddy & Ors.* (2015) 8 SCC 331 and the judgment of this Court in *Smt. Shanti Subba & Ors. vs. Shri Jashang Subba* SLR (2020) SIKKIM 482 to impress upon this Court the power conferred under Order 7 Rule 11 of the CPC is of drastic nature and while exercising its power only the averments in the plaint have to be read as a whole and the stand of the revisionists in the written statement or in the application for rejection of plaint is wholly immaterial.

7. The law is well settled on the contours and the mandate of Order 7 Rule 11 of the CPC as can be seen by the pronouncement of the Supreme Court in the judgments cited by the learned Counsel for the parties. It has been held by the Supreme Court that it is a special remedy and court is empowered to summarily dismiss a suit at the threshold if it is satisfied that the action should be terminated on any of the available grounds. It is the duty of the court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon. The plaint must be read as a whole and it is not permissible to cull out sentences and passages and read it in isolation. Substance and not the form only are to be looked into. The pleadings in the plaint, without addition or subtraction have to be construed as it stands. If the allegations in the plaint *prima facie* show a cause of action, court cannot embark upon an inquiry whether the allegations are true in fact. If on a meaningful reading thereof it is seen that the suit is manifestly vexatious and without any merit, and does not disclose the right to

sue, the power under Order 7 Rule 11 of the CPC would be exercised at any stage of the suit. The provision is mandatory in nature. The condition precedent to the exercise of power under Order 7 Rule 11 of the CPC is stringent. It is only if the averments in the plaint ex-facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claim will have to be adjudicated in the course of the trial.

8. As held by the Supreme Court "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.

9. Section 9 of the CPC merely provides that the courts have jurisdiction to try all suits of civil nature except those of which their cognizance is expressly or impliedly barred. Read in isolation Section 9 does not bar or prevent the plaintiff from approaching the Civil Court for redressal of his grievance as narrated in the plaint.

10. Revenue Order No.1 is an Old Law of Sikkim protected under Article 371F (k) of the Constitution of India. It provides that "..... no Bhutias and Lepchas are to be allowed to sell, mortgage or sublet any of their land to any person other than a Bhutia or a Lepcha without the express sanction of the Darbar or officers empowered by the Darbar in their behalf, whose order will be obtained by the landlord concerned. If anyone disobeys he will be severely punished." Revenue Order No.1 therefore, does not bar the plaintiff from approaching the Civil Court to secure his rights as a permissible user of plot no.42 and challenge the demolition notice dated 10.09.2021. It was not the respondent's case in the plaint that the Bhutia/Lepcha land was sold, mortgaged or sublet to him. In fact the respondent had categorically asserted that the ownership of the suit land continues with the landlord.

11. Order 7 Rule 11 (d) of the CPC provides that the plaint shall be rejected where the suit appears from the statement and the plaint to be barred by any law. The contention of the learned Additional Advocate General that the Act of 1985 bars the respondent from approaching the Civil Court is misplaced. The Act of 1985 provides for the allotment of house sites, regulation of construction, alteration and repair of buildings in Sikkim and for matters connected therewith. It does not bar the respondent from approaching the Civil Court for reliefs as prayed for. Section 12 of the Act of 1985 which was pressed by the learned Additional Advocate General only provides that all offences under it or Rules or Regulations made thereunder shall be cognizable and triable by a Judicial Magistrate of First Class. The argument that as section 12 provides that the offences under the Act of 1985, Rules or Regulations is triable by Judicial Magistrate, the respondent could not approach the Civil Court for the reliefs as prayed for in the plaint is also not sound. Violation of any of the provisions of the Act of 1985 which is considered as an offence under it is cognizable and triable

by a Judicial Magistrate of the First Class. That however, cannot mean that the respondent cannot challenge a notice of demolition before the Civil Court. The Act of 1985 does not contain any provision which prohibits the respondent from approaching the Civil Court.

12. It is also argued that the plaint does not disclose a cause of action. The learned Additional Advocate General submitted that the respondent failed to specifically assert that the cause of action arose at a particular time. Order 7 Rule 11 (a) of the CPC provides for rejection of plaint which does not disclose a cause of action. A perusal of the plaint reflects that the respondent has asserted all the necessary facts in support of his right to judgment. He has asserted that his father had been provided the suit land by late Zigmee Wangyal Lassopa in 1985 and later after the demise of his father, the respondent had also been given permission by Jolly Wangyal Lassopa, son of late Zigmee Wangyal Lassopa to construct the two storied RCC structure in the year 2004 and that he has been in its possession and occupation till date. The respondent has also asserted that on 10.09.2021 the revisionist no.2 issued a demolition notice to demolish the structure within 15 days of the issuance of the demolition notice. The bundle of material facts necessary for the respondent to prove in order to entitle him to the reliefs claimed in the suit has been stated by him. It cannot thus be said that the plaint failed to disclose the cause of action merely because it did not specifically state so. The cause of action is a bundle of material facts necessary for the plaintiff to prove and claim his right to judgment as held by the Supreme Court.

13. This Court shall now examine whether there is merit on the issue of limitation raised for the first time before this Court by the learned Additional Advocate General. Prayer (b) of the plaint for declaration that the demolition notice dated 10.09.2021 is illegal is within time discernible from the facts pleaded in the plaint as it was filed within the three years as provided in Article 58 of the Limitation Act, 1963.

14. The respondent has in paragraph 5 of the plaint averred that during the year 2008 the Town Planner blamed him that he had constructed the two storied RCC structure by encroaching the State Government drain. He has further stated that he had requested the Town Planner to get the services of an Amin in order to verify the actual status of the suit land however, it was not considered and he remained silent till 2016. It is further averred that during 2016 the Town Planner again raised the same issue but he was not ready for verification as per law and instead started making other grounds that the RCC structure was constructed without approved blue print plan. From the narration of the facts as pleaded in the plaint it is evident that no action was taken against the respondent till the issuance of the demolition notice dated 10.09.2021. It is true, as pointed out by the learned Additional Advocate General, that the demolition notice dated 10.09.2021 does mention about a previous demolition notice dated 11.03.2021 however, the plaint does not mention about it. On a reading of a plaint and the documents relied upon it does not ex-facie appear that it is barred by Article 58

of the Limitation Act, 1963 as at this stage the Court is not required to examine the truth of the averments, which must be examined during trial. Although it is discernible that the respondent was aware that the Town Planner had told him in 2008 and 2011 that he had encroached Government land it is also evident that no action was taken by the revisionists until the issuance of the impugned demolition notice dated 10.09.2021. According to the plaint, the respondent constructed the two storied RCC structure in the year 2004. It is his case that there was no objection from the Government offices when he did so. It is also the respondent's case that he has not encroached any part of the Government land. Quite clearly the real threat to his possession and occupation of the two storied RCC structure came only on 10.09.2021 on the issuance of the demolition notice. The plaint read as a whole clearly reflects that the clear and unequivocal threat to infringe the respondent's right of possession of the suit land and the RCC building came only when the demolition notice dated 10.09.2021 was received by him. Before this date the revisionists had not taken any action to disturb the respondent's possession. Mere oral allegation by the Town Planner in the year 2008 and 2016 without anything more cannot be construed as a cause of action to bring the suit for declaration. Thus it is clear from the reading of the statement in the plaint that the suit does not appear to be barred by Article 58 of the Limitation Act, 1963.

15. Further, Order 7 Rule 11 of the CPC provides for rejection of the plaint on the ground available therein and not rejection of one of the prayers in the plaint. As seen above prayer (b) of the plaint appears to be within the limitation period and thus the plaint could not have been rejected. The learned Civil Judge has correctly rejected the petition under Order 7 Rule 11 of the CPC filed by the revisionists. The Revision Petition is rejected. Pending interim application is also disposed of accordingly.