

(2018) 01 GAU CK 0035
In the Gauhati High Court
Case No : 55 of 2017

MUSTT FIROJA KHATUN

APPELLANT

Vs

MUSTT RAJIA BEGUM & ORS

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41 Rule 11](#), [Order 47 Rule 1](#), [Order 8 Rule 6\(c\)](#) -
[Assam Urban Areas Rent Control Act](#)

Citation : (2018) 01 GAU CK 0035

Hon'ble Judges : Prasanta Kumar Deka

Bench : Single Bench

Advocate : S K DEKA, M DEORI, A SATTAR, T K BHUYAN, S NASRAT, B ISLAM, L N CHOUDHURY, J Deka, MH?Choudhury, M Bhattacharya, K Phukan

Final Decision : Disposed

Judgement

1. Heard Mr. J Deka, learned counsel for the review petitioner and Mr. MH Choudhury, learned counsel for the respondent No. 1. Also heard

Ms. M Bhattacharya, learned counsel for the respondent No. 7 and Ms. K Phukan, learned Government Advocate appearing on behalf of the

respondents No. 2, 3, 4 and 6.

2. The present respondent No. 1 as the plaintiff preferred Title Suit No. 7/2009 in the court of learned Civil Judge, Morigaon against the review

petitioner as one of the defendants amongst others for the following reliefs:-

(i) decree directing the principal defendant No. 1 to pay the plaintiff a sum of Rs. 12,000/- only being the arrear rent for the suit premises

accumulated with effect from 30.08.2007 to 31.08.2009 at the rate of Rs. 500/- only per month;

(ii) a decree to deliver the plaintiff khass possession of the suit premises as described in the schedule "A" cited herein below by evicting the

principal defendant No. 1 along with other members of her family therefore;

(iii) a decree declaring that the plaintiff has right, title and interest over the schedule "B" land and the plaintiff is entitled to get a sum of Rs. 28,500/-

as compensation for the acquisitioned land and a sum of Rs. 1,74,290/- only for the standing pucca house, total Rs. 2,02,790/- only;

(iv) a decree directing the Addl. Deputy Commissioner cum Authority Officer, Morigaon to make payment of a sum of Rs. 28,500/- only as

compensation for the acquisitioned land and a sum of Rs. 1,74,290/- only for the standing pucca house, total Rs. 2,02,790/- only;

(v) a permanent injunction restraining the Addl. Deputy Commissioner cum Authority Officer, Morigaon and Circle Officer of Mayang Revenue

Circle to make payment the compensation of the acquisitioned land and pucca house to principal defendant No. 1 and permanent injunction

restraining the principal defendant No. 1 and her heirs and successors, agents or attorney or any one claiming under her to enter into the suit

premises after eviction;

(vi) a permanent injunction restraining the principal defendants No. 3, 4, 5 and 6 to enter into schedule "C" land till payment of the compensation

of the acquisitioned land for 4 (four) lane of National Highway;

(vii) cost of the suit;

(viii) any other relief or reliefs which the plaintiff legally entitled to.

3. The present petitioner as the defendant No. 1 filed her written statement thereby denying the claim of the respondent No. 1 along with a counter

claim with the following reliefs:-

a) a decree be passed by decreeing the counter claim by declaring right, title and interest over the suit land and the house described in Schedule

"A" below and also be decreed in granting confirmation of possession of the counter claimant in the suit premises, and

b) a decree be passed by declaring that the counter claimant has right, title and interest over the land acquisitioned within "A" Schedule land and

counter claimant is entitled to get sum of Rs. 28,500/- as compensation for the acquisitioned land and sum of Rs. 174290/- for the standing pucca

house a total amount of Rs. 202790/-, and

c) a decree be passed by directing the concerning authority to make the payment of compensation of Rs. 202790/- for the acquisitioned land and

house to the counter claimant, and

d) a permanent injunction be decreed against the plaintiff/ opp. Party and other holder of the notices of land acquisitioned case No. MRQ 2/2004

(L.A. Case No. 31/06) and any other concerning person restraining them in disbursing the compensation amount and from receiving the

compensation amount for the land and house acquisitioned in the suit patta, and

e) a decree be passed by declaring that the mutation done/ recorded in the body of the suit patta No. 47 dated 24-8-90, 10-5-91, 12-7-93, 12-

12-94, 16-10-94, 30-10-98, 19-5-03, 9-10-07 are illegal void inoperative in law and without any basis and merit, forged and fraudulent and

liable to be cancelled and thus does not create any right in favour of the plaintiff/ opp. party and opp. parties and not binding upon this counter

claimant, and

f) alternatively the counter claimant prays that during the continuance of the suit and the counter claim if any portion of the suit properties been

dispossessed by the opp. parties then a decree for khas possession be granted in favour of the counter claimant by evicting and removing such

person or persons by demolishing any construction if thereon from the suit land if constructed illegally with men and materials, and

g) a decree for precept be issued in favour of the counter claimant with a direction to the concerning authority to do the needful, and

h) cost of the counter claim also be decreed in favour of the counter claimant and against the plaintiff/ opp. parties, and

i) any other relief/ reliefs to which the counter claimant is entitled in law, equity and good conscience may also be kindly decreed.

Thereafter the learned trial court framed the following issues:-

i. Whether there is cause of action for the suit?

ii. Whether the suit is maintainable in its present form?

Iii. Whether the suit is bad for non-joinder of necessary parties?

iv. Whether the defendant No. 1 is tenant under the plaintiff in respect of the suit premises?

v. Whether the defendant No. 1 is to pay Rs. 12,000/- being the rent of Rs. 500/- per month from 30.08.2007 to 31.08.2009 to the

plaintiff and whether the defendant is liable to be evicted therefrom?

vi. Whether the plaintiff has right, title and interest over the suit land?

vii. Whether the plaintiff is entitled to recover Rs. 28,500/- as compensation and Rs. 1,74,290/- for the pucca house on the suit land

from the defendant No. 4?

viii. Whether the defendant is entitled to counter claim made in respect of the suit land?

ix. To what reliefs the plaintiff is entitled to?

4. The said Title Suit No. 7/2009 was decreed in favour of the respondent No. 1 whereafter the present petitioner preferred Title Appeal No.

2/2013 in the court of learned District Judge at Morigaon. The said title appeal was also dismissed whereafter the petitioner filed the connected

RSA No. 199/2014. While taking the said second appeal for admission under Order XLI Rule 11 of the Code of Civil Procedure, this Court vide

order dated 10.09.2014 dismissed the second appeal on the ground of maintainability. While dismissing the second appeal it was construed that

the prayer for eviction made by the plaintiff/ respondent No. 1 to be a prayer under Section 5 of the Assam Urban Areas Rent Control Act, 1972

(hereinafter referred to as "the Act"). Section 8 of the Act provides the right of appeal prescribing the decision of the appellate court to be final and

as such no second appeal lies. However, a liberty was given, though not expressly, to prefer a revision against the impugned judgment and decree

of the first appellate court. Instead of preferring a revision petition, the present petitioner preferred this review application submitting that the order

of dismissal on the ground of maintainability of the second appeal was passed without keeping in view that the petitioner preferred a counter claim

seeking her right, title and interest over the suit property. It is further submitted that though the liberty was given to the petitioner to prefer revision

application challenging the judgment and decree of the first appellate court, the same would not be sufficient for raising the grounds, more

specifically, with respect to the issues of right, title and interest of the petitioner over the suit land. Accordingly, Mr. Deka submits that this review

application be allowed.

5. Mr. Choudhury, learned counsel for the respondent No. 1, opposed to the said submission of Mr. Deka on the ground that the suit was filed by the respondent as the plaintiff seeking the relief for arrear rent and eviction on the ground of defaulter of the petitioner/ defendant. The relief sought in the suit is well within the ambit and scope of the section 5 of the Act. Under such circumstances, this review petition has no foundation within the parameters of Order XLVII Rule 1 of the CPC.

6. Considered the submissions of the learned counsels appearing on behalf of the parties to this petition. Perused the plaint and the reliefs sought therein by the respondent No. 1 as the plaintiff and also perused the counter claim and the reliefs sought therein by the present petitioner as the counter claimant. On perusal of the reliefs sought by the petitioner as the counter claimant it is apparent and clear that she has sought for declaration of her right, title and interest over the suit property wherein she is residing in the house claimed by the respondent to be their house terming the present petitioner/ counter claimant as the tenant. The learned trial court accordingly framed the issues for trial both with respect to the relationship of landlord and tenant and also with respect to the title of the counter claimant. The learned trial court did not differentiate and/or invoke the jurisdiction as provided under Order VIII Rule 6(C) of the Civil Procedure Code, 1908 (for short "CPC") for exclusion of the counter claim while deciding the suit of the plaintiff/ respondent No. 1. The learned trial court ought to have invoked the jurisdiction under the said provision of Order VIII Rule 6 (C) of the CPC in order to segregate the counter claim from the suit of the respondent No. 1 to go for trial separately. Having not done so, the present petitioner having lost in both the courts below, had preferred the connected second appeal challenging the judgment and decree passed by the learned first appellate court. In such a situation wherein the issues involving title of the parties to the suit were decided not in a casual manner but in a substantial manner, if the petitioner is not permitted to continue with the second appeal much prejudice would be caused to her.

7. Now whether this can be a ground for review within the parameters of Order XLVII Rule 1 of the CPC. In Board of Control for Cricket, India and another v. Netaji Cricket Club reported in AIR 2005 SC 592, it was held that

an application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit" i.e. an act of the court will prejudice no one. In Lily Thomas v. Union of India reported in

AIR 2000 SC 1650, the Hon"ble Apex Court held as follows:-

52. The dictionary meaning of the word ""review"" is ""the act of looking; offer something again with a view to correction or improvement. It cannot

be denied that the review is the creation of a statute. This Court in Patel Narshi Thakersh and others v. Pradyunman Singhji Arjun Singhji (AIR

1970 SC 1273) held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or

technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out

in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not

exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error.

8. Keeping in view the aforesaid scope of review it can be concluded that had the counter claim of the petitioner been segregated and taken up for

trial independently the petitioner would not have faced the hurdle for which she had to file this petition. Further, from the order under review it is

seen that the above aspect, owing to inadvertency was not considered. As seen hereinabove, the issues framed by the trial court for the trial of the

suit includes the issue with regard to title of the parties over the suit property. The ground raised in this petition, in my opinion, falls within the

parameters of Order XLVII Rule 1 of the CPC moreso, when the title of the parties are decided substantially. There being no escape, law has to

bend before justice by allowing this review petition. Accordingly, this review petition is allowed by recalling the order dated 10.09.2014 passed in

RSA No. 199/2014.

9. This review petition is accordingly disposed of.