
(2015) 05 TP CK 0035
In the Tripura High Court
Case No : CRP No. 64 of 2012

Rakhal Chandra Majumder and Others	APPELLANT
Vs	
Nani Gopal Ghosh and Others	RESPONDENT

Date of Decision : 30-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 10 Rule 10, Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d)

Citation : (2015) 05 TP CK 0035

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; S.M. Chakraborty and B. Chakraborty, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J—This petition by the petitioners(hereinafter referred to as the defendants) is directed against the order dated 22.5.2012 passed by the learned Civil Judge(Sr. Division), Kailashahar, North Tripura rejecting the application filed by the defendants under Order VII Rule 11 of CPC for rejection of the plaint.

2. In view of the decision which I propose to take it is not necessary to give the entire facts of the case. However, it would be pertinent to mention that the parties are closely related to each other and all derive their title from their common predecessor Late Shri Akhil Chandra Ghosh. It is not disputed that Akhil Chandra Ghosh was the owner of the suit land. It is alleged that prior to the coming into force of the Tripura Land Revenue and Land Reforms Act, 1960 (TLR and LR Act, 1960) which was enforced on 15.4.1963 Akhil Chandra Ghosh with a view to avoid the rigours of the Act executed a virtually fraudulent transaction transferring the suit property in favour of his daughter Gita Rani Majumder(Ghosh). According to the plaintiffs, Late Smt. Gita Rani Majumder(Ghosh) was never placed in possession of the suit land and the plaintiffs are in possession of the suit land.

3. The following reliefs were claimed by the plaintiffs:

"A) Declaring the aforesaid plaintiffs are the exclusive owners and possessors of the suit land and suit property scheduled below and that defendant Nos. 1(a) to 1(e) have no right, title or interest or possession over the suit land and suit property and further that defendant Nos. 2 to 5 have also no right over or in relation to the said suit land;

B) Declaring that the suit deed dated 13.1.2012 is illegal, infructuous, ineffective, collusive, fraudulent and not binding upon the plaintiff;

C) Granting and issuing perpetual injunction restraining defendant Nos. 1(a) to 1(e) from transferring the suit land or any portion thereof in favour of defendant Nos. 2 to 5 or to any other person, and from encumbering said land with any person, and from executing any deed to those effects;

D) Granting all other reliefs deemed fit and proper;

AND

E) Granting full cost of litigation."

4. The defendants 1(a) to 1(e) i.e. the petitioners herein filed an application under Order VII Rule 11(d) CPC stating that the suit was barred by the provisions of Section 188 of the TLR and LR Act, 1960. According to the defendants, Akhil Chandra Ghosh (who was an intermediary) settled his daughter as a tenant of the land and after enforcement of TLR and LR Act, 1960 Akhil Chandra Ghosh had no connection with the land which vested in the State and in terms of the provisions of the Act Gita Rani Majumder(Ghosh) became a tenant directly under the government. Various other issues had been raised that the suit is not within the limitation and that the suit is an abuse of the process of the Court but the main issue in the application was that the suit is barred by law. The learned trial Court rejected the application. Hence this petition.

5. Mr. D.K. Biswas learned counsel strenuously contends that the document in favour of Gita Rani Majumder(Ghosh) was executed in the year 1962 to the knowledge of the plaintiffs and, therefore, after 50 years they cannot challenge the same and the suit is misconceived and fictitious and this should be nipped in the bud. He also submits that the suit is barred under the provisions of the TLR and LR Act, 1960.

6. Strong reliance has been placed by Mr. D.K. Biswas on the judgment of the Apex Court in Roop Lal Sathi Vs. Nachhattar Singh, AIR 1982 SC 1559 : (1982) 2 SCALE 976 : (1982) 3 SCC 487 : (1983) 1 SCR 702 wherein the Apex Court held that where the plaint discloses no cause of action, it is obligatory upon the Court to reject the plaint as a whole under Order VII, Rule 11(a) of the Code. At the same time the Apex Court held that the suit cannot be partly rejected. According to Mr. Biswas, since the suit is barred, the same deserves to be rejected.

7. Mr. Biswas also placed reliance on the judgment of the Apex Court in Sopan

Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, (2004) 3 AD 162 : AIR 2004 SC 1801 : (2004) 2 SCALE 82 : (2004) 3 SCC 137 : (2004) 2 SCR 1004 : (2004) 2 UJ 817 : (2004) AIRSCW 799 : (2004) AIRSCW 4778 wherein the Apex Court held as follows:

"10. In Saleem Bhai and Others Vs. State of Maharashtra and Others, AIR 2003 SC 759 : (2003) 1 DMC 166 : (2002) 10 JT 558 : (2003) 1 SCC 557 : (2002) 5 SCR 491 Supp : (2003) 1 UJ 218 : (2003) AIRSCW 174 it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before, the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

11. In I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, AIR 1998 SC 634 : (1998) 92 CompCas 1 : (1997) 3 CTC 746 : (1997) 10 JT 334 : (1997) 7 SCALE 767 : (1998) 2 SCC 70 : (1997) 6 SCR 683 Supp it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal residing of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the grounds mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See T. Arivandandam Vs. T.V. Satyapal and Another, AIR 1977 SC 2421 : (1977) 4 SCC 467 : (1978) 1 SCR 742 : (1977) 9 UJ 697)

13. It is trite law that not any particular plea has to be considered and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi Vs. Nachhattar Singh, AIR 1982 SC 1559 : (1982) 2 SCALE 976 : (1982) 3 SCC 487 : (1983) 1 SCR 702 , only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

.....

15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be

looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

8. At the outset I may state that this Court is not going into the question whether the suit is barred by limitation. It would, however, be pertinent to mention that one of the reliefs claimed in the suit is that the plaintiffs are in possession of the suit land. Assuming for the sake of argument that the defendants have no title over the suit land, even then if they are in possession they cannot be dispossessed of the suit land except in accordance with law. Mr. Biswas submits that even if that be the position then this plaint should be rejected with liberty given to the plaintiffs to file a fresh suit limiting their prayer to possession as above. This argument cannot be accepted. In the judgment relied upon by Mr. Biswas, the Apex Court held as follows:

".....Where the plaint discloses no cause of action, it is obligatory upon the Court to reject the plaint as a whole under Order VII, Rule 11(a) of the Code, but the rule does not justify the rejection of any particular portion of a plaint....."

It is settled law that a plaint cannot be partly rejected. Therefore, even if there was no merit in the other arguments of the plaintiffs they have a right to protect their possession in case they are in possession of the land. This is a question which will have to be decided on the basis of evidence and, therefore, I find no illegality in the order of the trial Court and no order in this regard.

9. It may be true as urged by Mr. Biswas that there is very little merit in the suit. That will depend on the finding whether the plaintiffs are in possession of the suit land or not. In case they are in possession of the suit land, many other questions would arise. Therefore, evidence would have to be led to decide this case. As such I find no merit in the petition.

10. It is made clear that this Court has expressed no opinion on the merits of the rival contentions of the parties and anything stated in this judgment is only meant to decide this petition and will have no bearing on the decision of the main suit which must be decided on the basis of the evidence led by the parties.

11. Keeping in view the nature of the disputes and also the fact that the document which has been challenged was executed more than 50 years back, it is directed that the parties shall appear before the learned trial Court on 30th June, 2015 by which date the petitioner-defendants must file their written statement. The learned trial Court shall make an effort to decide the case, as early as possible and in any event not later than 31st December, 2015.

12. Registry is directed to ensure that the LCR is sent well before the next date.

13. Petition is disposed of accordingly.