

(2025) 05 MEG CK 0557

In the Meghalaya High Court

Case No : Revision Petition No. 27 Of 2024

Sapna Newar & Ors.

APPELLANT

Vs

Nita Newar & Ors.

RESPONDENT

Date of Decision : 27-05-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Order 23 Rule 1, Order 23 Rule 1(5), Order 23 Rule 3

Citation : (2025) 05 MEG CK 0557

Hon'ble Judges : B. Bhattacharjee, J

Bench : Single Bench

Advocate : K. Khan, S. K. Hassan, S. A. Sheikh, S. Dhar, P. R. Paske

Final Decision : Dismissed

Judgement

B. Bhattacharjee, J

The petitioners, who are plaintiffs No. 1 & 6 in Title Suit No. 1 of 2021, have preferred this Civil Revision Petition against the order dated 29-05-2023 passed by the learned Court of Assistant to Deputy Commissioner, Tura in Petitions No. 67 & 69 of 2021 arising out of T.S. No.1 of 2021.

1. Title Suit No. 1 of 2021 was jointly instituted by the petitioners along with the respondents No. 5, 6, 7 & 8 as plaintiffs against the respondents No.1, 2, 3 & 4 before the Court of Assistant to Deputy Commissioner, Tura for declaration of right, title and interest over the suit property and for declaring the boundary demarcation orders dated 22-05-2015, 21-11-2016 and 10-11-2020 of the Revenue Officer, GHADC, Tura as null and void and also for recovery of possession. During the course of the proceeding of the suit, the petitioners, who are plaintiffs No.1 & 4 in T.S.No.1 of 2021, filed two petitions numbered as Petitions No. 67 & 69 before the learned Trial Court under Order XXIII Rule 1 CPC for withdrawal of their claim in the suit. The learned Trial Court after hearing the parties by order dated 29-05-2023 rejected the petitions filed by the petitioners on the ground of absence of consent from other co-plaintiffs No. 2, 3, 4 & 5 in T.

S. No. 1 of 2021.

2. Assailing the order dated 29-05-2023, Mr. K. Khan, learned Senior Counsel appearing for the petitioners submits that the learned Trial Court rejected the prayer of the petitioners without proper appreciation of the materials on record. He contends that the learned Trial Court has erred in law and facts, inasmuch as, the petitions filed were based on lawful agreement and the learned Trial Court ought to have exercised power under Order XXIII Rule 3 CPC. He submits that in the facts and situations of the case, the learned Trial Court could not have raised the provision of Order XXIII Rule 1 (5) to reject the petitions filed by the petitioners. He further submits that the learned Trial Court while passing the order dated 29-05-2021 lost sight of the fact that the rejection of the petitions of the petitioners would also amount to rejection of the deed of agreement/ compromise between the petitioners and the respondents No.1 & 4. He submits that the learned Trial Court passed the impugned order in violation of established norms of law and prays for setting aside and quashing of the impugned order dated 29-05-2023.

3. Mr. S. A. Sheikh, learned Counsel appearing for the respondents No.1 & 4 and Ms. S. Dhar, learned Counsel appearing for the respondents No. 2 & 3 supported the case of the petitioner.

4. Mr. P. R. Paske, learned Counsel appearing for the respondents No.5 - 8 supports the impugned order and submits that the learned Trial Court has correctly applied the law before passing the order dated 29-05-2023. He submits that the petitioners filed the petitions No.67 & 69 under Order XXIII Rule1 and the learned Trial Court rightly rejected the petitions for want of consent of the other co-plaintiffs in terms of provision of Order XXIII Rule 1 (5). He submits that the suit property involved in T.S. No. 1 of 2021 is an undivided property and hence, the suit could not have been compromised by the petitioners without consent of the co-plaintiffs. He further submits that the purported deed of compromise cannot have any legal consideration in the present matter in view of the fact that the same was executed on 21-11-2019, much before the institution of the T.S. No. 1 of 2021 in the month of February, 2021. The learned Counsel refers to the decision of the Apex Court in Anil Kumar Singh Vs. Vijay Pal Singh and Others, (2018) 12 SCC 584 and submits that if there are more than one plaintiff then unless all the plaintiffs give consent to withdraw the suit, the permission to withdraw the suit cannot be granted. He submits that there is no merit in the present revision petition and prays for dismissal of the same.

5. Heard the parties and perused the materials on record.

6. T.S. No. 1 of 2021 was instituted by the petitioners along with the respondents No.5, 6, 7 & 8 as plaintiffs. The petitioners are the plaintiff No.1 and the plaintiff No.4 respectively in the suit. The petitions No. 67 & 69 were filed by the petitioners before the Trial Court under Order XXIII Rule1 on the ground that the respondent No.1 had fulfilled the terms and conditions of the deed of agreement

dated 28-11-2019 and hence, the petitioners were desirous to withdraw themselves from the suit. No prayer was made by the petitioners in their petitions before the Trial Court to record such agreement/compromise and for passing of a compromise decree in terms of Order XXIII Rule 3.

7. Perusal of the Petitions No. 67 & 69 reveals that the same were filed before the Trial Court by invoking provision of Order XXIII Rule 1. The cause title of both the petitions clearly indicates that the petitions were filed for withdrawal of the petitioners' claims against the defendants. In addition, the prayer made in both the petitions, which were identically worded, read as follows: -

"Hence, in the above context; the Petitioner above-named humbly prays that she may be allowed to withdraw her claims Under Order XXIII Rule 1 of the Civil Procedure Code against all the Defendants as she is no longer desirous of continuing with the instant case and for this your petitioner as in duty bound shall ever pray."

8. The argument raised on behalf of the petitioners that since the Petitions No. 67 & 69 were filed on the basis of the deed of agreement, the same should have been treated as petitions under Order XXIII Rule 3 is not supported by any law. On the other hand, there is nothing in law which bars filing of application under Order XXIII Rule 1 on the basis of deed of agreement/compromise seeking withdrawal or abandonment of claim in a suit. There is also no law which mandates that whenever a petition under Order XXIII Rule 1 is supported by a deed of agreement/compromise, the same has to be treated as a petition under Order XXIII Rule 3 and the Court must proceed to pass a compromise decree on the basis of such petition. The contention, as such, has no force in law.

9. It is an admitted fact that apart from the petitioners herein, the respondents No.5, 6, 7 & 8 are also the co-plaintiffs in T.S. No. 1 of 2021 and that no consent of the said respondents was taken before filing the Petitions No. 67 & 69 by the petitioners. Order XXIII Rule 1 (5) reads as follows: -

"Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

Further, the Apex Court in the case of Anil Kumar Singh (supra) at para 20 observed: -

"Sub-Rule (5) of Rule 1 says that, if there are more than one plaintiff then unless all the plaintiffs give consent to withdraw the suit, the permission to withdraw the suit cannot be granted under sub-rule (1) or (3)."

It follows from the above that consent of all the plaintiffs are mandatory for withdrawal of suit. The Trial Court, as such, is within its right to reject the petition seeking withdrawal of suit for want of consent of all the plaintiffs.

10. The contention of the learned Senior Counsel that rejection of the petitions of the petitioners by the Trial Court amounts to rejection of the deed of agreement also do not find any support in law. In the present case, it is beyond reasonable doubt that the learned Trial Court has rejected the Petitions No. 67 & 69 only on the ground of absence of consent of the respondents No. 5, 6, 7 & 8, who are the plaintiffs No. 2, 3, 4 & 5 in T.S. No. 1 of 2021. The learned Trial Court while rejecting the prayer of the petitioners did not discuss or decide any issue with regard to the admissibility or acceptability of the deed of agreement in question. The contention, as such, is devoid of merit.

11. In view of the discussions made above, no case has been made out by the petitioners for interference with the Order dated 29-05-2023 passed by the learned Assistant to the Deputy Commissioner, Tura.

12. The Revision Petition stands dismissed.