

(2012) 04 GAU CK 0080
In the Gauhati High Court
Case No : CRP No. 20 of 2011

Smt. Sandhya Devi Thapa and Shri Dalbahadur Thapa APPELLANT
Vs
Respondent: Smti. Anjali Singh Thapa and Others RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 10, 115

Citation : (2012) 04 GAU CK 0080

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : A.K. Bhowmik, Mr. B. Bhattacharjee, Mr. R. Datta, for the Appellant;
P.K. Dhar, Advocate Mr. H. Chakraborty, Advocate Mr. A. Dasgupta, Advocate Mrs.
K. Roy, Advocate Mrs. S. Biswas, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble M R. Justice S.C. Das

1. This revisional application u/s 115 of the Code of Civil Procedure, 1908 is directed against order dated 12.04.2011, passed by learned Civil Judge, Senior Division, Court No.1, Agartala, West Tripura, in Case No. TS 19 of 2010. By the impugned order learned Civil Judge rejected the petition filed by the defendant-petitioners under Order VII Rule 11 of CPC, and hence, the present revisional application is filed challenging the impugned order. 2. Heard learned senior counsel, Mr. A.K. Bhowmik, assisted by learned counsel, Mr. R. Datta for the petitioners and learned counsel, Mr. P.K. Dhar for respondent Nos.1 and 5. Other respondents have chosen to remain absent.

2. Learned senior counsel, Mr. Bhowmik submits that petitioner No.1 and respondent Nos.1 to 4 are the full blood sisters and respondent No.5 is their full blood brother. Their father Ganapada Singh Thapa left behind certain properties from which the petitioner No.1 purchased some portion and inherited the property with other respondents including their mother Janaki Devi Thapa.

Petitioner No.1 instituted Title Suit No.38 of 1995 in the Court of learned Civil Judge, Jr. Division, Agartala, against her mother, brother and sisters, seeking declaration and consequential relief. The suit was decreed in favour of the plaintiff-petitioner, which was challenged before the learned District Judge in Title Appeal and the appeal was dismissed. The judgment and decree was affirmed even in the High Court in second appeal, and thereafter, the decree was executed through Court by Execution (T) No.23 of 2005. The defendants, having lost the case, and after the decree was executed, now filed TS No.19 of 2010 in the Court of learned Civil Judge, Sr. Division again seeking declaration and cancellation of Deed, etc. on the ground that the plaintiff of that suit i.e. the respondent No.1, Smt. Anjali Singh Thapa herein, was a mentally retarded person. The plaint does not disclose a cause of action and the suit is barred by res judicata, and therefore, the petitioners filed a petition under Order VII Rule 11 of CPC before the learned Civil Judge, Sr. Division, praying for rejection of the plaint but the learned Civil Judge, Sr. Division rejected the prayer with a cryptic order, and hence, the present revisional application is filed for setting aside the order of the learned Civil Judge, Sr. Division and to hold that the plaint should be rejected.

3. Per contra, appearing on behalf of the respondent Nos.1 and 5, learned counsel, Mr. Dhar submits that petitioner No.1 and the defendants are all full blood sisters and brother. Petitioner No.1, being a full blood sister of Anjali Singh Thapa, the plaintiff of TS No.19 of 2010, knew the fact that Anjali was a mentally retarded person from her childhood but suppressing that fact, Anjali was arrayed in the suit and no summon was legally served on Anjali and she was not represented by a legal guardian, and therefore, the decree was not binding on Anjali, who is the plaintiff of the present Title Suit No.19 of 2010. In the year 2007, the respondent No.5, Bishnu Singh Thapa was appointed as legal guardian of the plaintiff, Anjali Singh Thapa and such appointment was confirmed by District Magistrate on 21.03.2007, and thereafter, the legal guardian of Anjali Singh Thapa filed Title Suit No.19 of 2010, seeking declaration and cancellation of the Deed, etc. The plaint clearly discloses cause of action. Whether the suit is barred by res judicata or not is a mixed question of law and fact, which is to be decided after recording evidence, and under such circumstances, learned counsel supported the order passed by the learned Civil Judge, Sr. Division and prayed for dismissal of the revisional application.

4. For ready reference, let us reproduce here order VII Rule 11 of CPC, which reads thus:

11. Rejection of plaint. -

The plaint shall be rejected in the following cases:(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

5. The whole purpose of conferment of powers under Order VII Rule 11 of CPC is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and must be terminated and brought to an end at the earliest. A defendant should not be put to the long and expensive process of trial and the burden of litigation when it is clear at the outset that original plaintiff has no cause of action against the application and the plaint discloses no cause of action whatsoever. The sole intendment of the provision is to keep out of Courts irresponsible law suits. An application under Order VII Rule 11 of CPC has to be examined and ordered only on the plaint averments and nothing else. Whether the plaint averments are true or not, are not an issue in examining an application under Order VII Rule 11 of CPC and the pleas of the defendants are not required to be seen for decision on such application.

6. Admittedly, the petitioner and the respondents are sisters and brother and the litigation between them is for the property left behind by their father. It is an admitted fact that the petitioner instituted Title Suit No.38 of 1995, seeking declaration and consequential relief and the suit was decreed and the decree has already ended in execution. It is clearly brought on record in the averments made in the plaint of the present suit filed by respondent No.1, Anjali Singh Thapa that she was a mentally retarded person when the petitioner instituted the Title Suit No.38 of 1995 and on that ground the plaintiff-respondent No.1, through her legal guardian, now, filed the present suit, seeking declaration, cancellation of the Deed and consequential relief. Respondent-plaintiff in Title Suit No.19 of 2010 narrated the bundle of facts and the cause of action thereof seeking relief thereunder. It cannot be said that there is no cause of action. The petitioners also filed their written statement. The learned trial Judge rejected the prayer under Order VII Rule 11 of CPC and fixed the case for framing issues. I find no illegality or impropriety in the impugned order passed by learned trial

Judge though the order is found to be very cryptic. It is a settled law that in order to consider a prayer under Order VII Rule 11 of CPC, the Court is to only consider the averments made in the plaint and not the allegation or the counter allegation made in the written statement. The Apex Court in the case of *Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others*, laid down the law on the point and the Court held thus:

The plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under O. VII, R. 11. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under O.VII R.11 cannot be exercised for rejection of the suit filed by the plaintiff appellants. Similarly, the Court could not have taken the aid of S.10 of the Code for stay of the suit as there is no previously instituted suit pending in a competent Court between the parties raising directly and substantially the same issues as raised in the present suit.

Further while considering a revisional application u/s 115 of CPC, this Court is not required to enter into the details of the case in respect of the allegation and counter allegation made in the plaint or written statement. In order to invoke, the revisional jurisdiction of the High Court, the party concerned is not only to satisfy the High Court that by the order impugned subordinate Court exercised a jurisdiction not vested in it by law or has failed to exercise its jurisdiction vested in it by law or acted in the exercise of its jurisdiction illegally or with material irregularity, but, also, to satisfy the High Court that if the order had been made in his favour that would have finally disposed of the case. A Single Bench of this Court in the case of *Nityananda Dutta vs. Anisul Haque & Anr.* reported in (2008) 4 GLR 164 has held thus:

The scope of revisional jurisdiction of the High Court u/s 115 of the CPC is very limited. The High Court can exercise the revisional power where the subordinate court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity, provided no appeal lies against the decision of the

subordinate court, against which order the revision petition has been preferred. In exercise of the revisional power u/s 115 of the CPC the High Court cannot also re-appreciate the evidences on record and interfere with the findings of the learned Court below unless the findings recorded by the learned court below is perverse or there is non- application of mind on the part of the Court or non- appreciation of the evidence available on record while recording such finding

The petitioners failed to show that the subordinate Court exercised its jurisdiction not vested in it or that the Court exercised its jurisdiction illegally or with material irregularity and, I think, that the revisional Court should not interfere with such order unless it is clearly brought out that the order was absolutely beyond jurisdiction or perverse. Since the defendants also filed written statement in the suit, learned trial Judge shall frame issues and it is up to the learned trial Judge as to whether he should proceed to hear the case on a preliminary issue, but it is advisable that all the possible issues should be framed together and decided after recording evidence. The revisional application, is therefore, found to be without merit and hence dismissed but in the circumstances without costs.