
(2011) 03 GAU CK 0003
In the Gauhati High Court
Case No : Regular First Appeal No. 12. of 2010

State of Mizoram and Others

APPELLANT

Vs

Sanglawma

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2(1), Order 14 Rule 2(2), 80

Citation : AIR 2011 Guw 178 : (2011) 4 GLR 376

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : Dinari T. Aziyu, for the Appellant; L.H. Lianhrima and S. Sailo, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—This appeal by the Defendant Nos. 1 to 5 is against the judgment and decree dated 17th March 2010 passed in Civil Suit No. 22/2004 by the learned Senior Civil Judge, Aizawl Judicial District, Aizawl, decreeing, the suit of the Plaintiff/Respondent for Rs. 7,03,265 (Rupees seven lakh three thousand two hundred and sixty-five) only with interest at the rate of nine per cent per annum with effect from 29th August, 2001 as compensation for demolition of the Plaintiffs building that was standing on the land covered by LSC No. 3142/1986. The Respondent-herein, as Plaintiff had instituted the said suit praying for a decree declaring that Defendants executed an agreement with him for payment of compensation for demolition of an RCC building standing over the land in LSC No. 3142/1986 that belonged to him and for passing a decree for Rs. 7,03,265 (Rupees seven lakh three thousand two hundred and sixty-five) with interest as compensation for the demolition carried out by the Defendants, contending inter alia that due to the landslide occurred in the year 1998 the link road between, the Aizawl City and Central Workshop was totally blocked and damaged, resulting in damage of his own residential building (RCC structure) partly and while he was about to repair the building, the Defendants, with a view to restore the said link

road had asked the Plaintiff to vacate his building for clearance of the said link road as demolition of said building was required. It has also been pleaded in the plaint that the said building of the Plaintiff was eventually demolished by the Defendants and compensation therefor was assessed as Rs. 7,03,265, which is evident from the communication dated 29th August, 2001 issued by the Sub-Divisional Officer, PWD, IWT Sub-Division, Aizawl. According to the Plaintiff, despite such assessment and assurance given, since the compensation had not been paid, he was left with no alternative but to file the suit for recovery of the said amount, apart from the value of the land, the possession of which was taken by the Defendants for the purpose of clearance of the link road.

2. The Defendants/Appellants, on receipt of summons, entered appearance and filed their joint written statement denying the claim of the Plaintiff and contending that the building of the Plaintiff had never been demolished by them and that the same was in fact partly damaged due to the heavy landslide in the year 1998, rendering the said building unfit for dwelling purpose for which the Plaintiff had himself demolished the structure. The plea of maintainability of the suit for non-joinder and mis-joinder of necessary parties, apart from the plea of limitation was agitated by the Defendants in their said joint written statement.

3. The learned trial court, on the basis of pleadings of the parties, framed the following issues for determination:

(1) Whether the suit is maintainable in its present form and style?

(2) Whether the suit is barred by limitation?

(3) Whether the Plaintiff is entitled to the relief claimed. If so, to what extent and who is liable?

4. The Respondent/Plaintiff, in support of his case, examined 3 witnesses and exhibited four documents, namely, exhibit-P/I, a copy of Land Settlement Certificate No. 3142/1986; exhibit-P/II, copy of the communication dated 29th August, 2001 issued by the SDO, PWD, IWT, Sub-Division, Aizawl, to the Executive Engineer, PWD, Aizawl Road South Division, Aizawl; exhibit-P/III, a Certificate dated 1st September, 2002 issued by the retired Chief Engineer, PWD, Zone-I, Aizawl; and exhibit-P/TV, copy of the legal notice dated 4th March, 2004 issued u/s 80 of CPC to the Defendants.

5. The Plaintiff, apart from examining himself as PW1, also examined Sri Lalsangbera, the president of Village Council, S. Hlimen, as PW2 and Mr. Er. P. Lalchhunga, who had issued the certificate (exhibit-P/III), as PW3, while the Defendant examined 1 witness. All witnesses were duly cross-examined by the respective parties on different dates between 12th July, 2006 and 22nd July, 2008.

6. The learned trial court, even before examination of the witnesses by the parties, took up the issue Nos. 1 and 2, as framed by him for consideration and decision, and thereafter vide order dated 30th September, 2005, decided the said

issue in favour of Plaintiff without, however, recording any reason whatsoever therefor, which is quoted below in its entirety:

Both parties are present through counsels. Today is fixed for P/hearing. Accordingly parties are heard at length.

The learned Counsel of the Plaintiff submitted that the cause of action is in favour of the Plaintiff and the Plaintiff is entitled to relief claimed and prayed to maintain the case/suit and to proceed further with the case.

The learned Counsel for the Defendant submitted that the suit is barred by limitation and there is no cause of action in favour of the Plaintiff and the suit is bad for non-joinder of necessary parties and prayed to dismiss the suit at this stage.

On hearing the submission of both sides and on careful perusal of the case record, I am inclined to maintain the suit. Accordingly the suit is maintained.

Fix 20.10.05 for P/hearing.

Give copy of this order to all concerned parties.

7. The learned trial court, thereafter, proceeded to decide the suit, and by the impugned judgment and decree, held that the Plaintiff is entitled to compensation of Rs. 7,03,265, for the demolition of his RCC structure, in view of the communication dated 29th August, 2001 (exhibit-P/II). The learned trial court, while doing so, however, did not take into consideration the exhibit P/II in its entirety and also the effect of the objection raised by the Defendants as to the admissibility of the said document as evidence. That apart, the evidence adduced by the Defendants was not at all discussed while passing the impugned judgment and decree.

8. Sub-rule (1) of Rule 2 of order 14, CPC requires the court to pronounce judgment on all issues notwithstanding that a case may be disposed of on a preliminary issue, subject, however, to the provisions of Sub-rule (2). The court, if is of opinion that the case or any part thereof may be disposed of on an issue of law only, may try that issue first, if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force.

9. In the case in hand, the issue relating to the maintainability of the suit was framed based on the pleading of the Defendants that the suit is not maintainable for non-joinder and mis-joinder of necessary parties. That apart, on the basis of the pleading of the Defendants that the suit is barred by time, the issue relating to the limitation was framed. The question whether the suit is bad for non-joinder or mis-joinder of necessary parties neither relates to the jurisdiction of the court nor bar to the suit created by any law for the time being in force and, hence, cannot be decided as preliminary issue, under order 14, Rule 2(2), Code of Civil Procedure. Similarly the question of limitation being a mixed question of law and facts also cannot be decided as preliminary issue. The learned trial court,

however, decided those issues as preliminary issues, that too without recording any reason therefor and prior to recording the evidences of the parties.

10. That being the position, the judgment and decree dated 17th March, 2010 passed in Civil Suit No. 22/2004 by learned Senior Civil Judge, Aizawl Judicial District, Aizawl, is set aside. The case is remitted to the learned Senior Civil Judge, Aizawl Judicial District, Aizawl, for deciding the suit afresh, on the basis of the evidences adduced by the parties and by giving reasons for recording the findings on each issues. It would also be open to the learned trial court to grant permission to the parties to lead further evidence, if asked for. The parties are directed to appear before the learned trial court, i.e., the court of learned Senior Civil Judge, Aizawl Judicial District, Aizawl, on 18th April, 2011, who, within a period of six months thereafter, shall decide the suit by giving reasons therefor.

11. The appeal is allowed to the extent indicated above. The parties shall, however, bear their own costs.

12. Registry is directed to send down the LCR to the court of the learned Senior Civil Judge, Aizawl Judicial District, Aizawl, so as to reach that court on or before 11th April, 2011.