
(2011) 09 GAU CK 0096
In the Gauhati High Court
Case No : Regular First Appeal No. 12 of 2011

State of Mizoram and Others

APPELLANT

Vs

Smt. Biakkungi

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 10, Order 8 Rule 5, Order 8 Rule 5(2), Order 9 Rule 13, 151

Citation : (2012) 1 GLD 54

Hon'ble Judges : H. Baruah, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : Nelson Sailo, Public Prosecutor State of Mizoram, for the Appellant;
B. Lalramenga, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—This appeal is directed against the judgment and decree dated 21.12.2011 passed by the learned. Senior Civil Judge, Aizawl in Civil Suit No. 11 of 2008. By this ex parte judgment, purportedly passed under Order VIII, Rule 5 sub-rule (2) of the Code of Civil Procedure, the trial court has decreed the suit declaring issuance of land LSC No. DPF No. 68 of 2005, issued by the respondent No. 6 in favour of the defendant No. 2 as null and void. Additionally, the trial court has also directed the respondents to pay rent of Rs. 10,000/- per month from the month of January, 1984 till the defendants vacate the suit land. This amount is directed to carry interest at the rate of 12% per month. Being aggrieved with this decree, the State appellant has filed this appeal. We have heard Shri N. Sailo, learned Addl. Advocate General for the appellants and Shri B. Lalramertga, learned counsel for the plaintiff/respondent. We have also perused the impugned judgment.

2. The learned Addl. Advocate General for the appellant submitted that some portion of the land belonging to the plaintiff was allowed to be utilized by the Public Health Engineering Department (defendant No. 2) to construct Zonal

Water Tank with an understanding with the plaintiff. Be that as it may" according to the learned counsel, even a decree without written statement should not be passed in a mechanical manner. In support of his submission the learned counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in the case between Balraj Taneja and Another Vs. Sunil Madan and Another, .

3. In the aforesaid judgment the Hon'ble Supreme Court has held that in a case, where a written statement has not been filed by the defendants, court should be a little cautious in proceeding under Order VIII Rule 10 CPC and the court should see that If the facts set out in the plaint are treated to have been admitted, a judgment] and possibly be passed in favour of the plaintiff without requiring him to prove any fact, mentioned in the plaint. In our opinion, provisions of Order 8 Rule 10 CPC are akin to the provisions of Order 8 Rule 5 and as such, guidelines given by the Supreme Court should have been followed in the present case also.

4. There are many other judgments also, wherein; it has been held that even in an ex parte judgment the plaintiff must make out a prima facie case to get a decree.

5. In the case of Sudha Devi Vs. M.P. Narayanan and Others, , the Apex Court has held that even in the absence of defence the court cannot pass an ex parte decree without reliable and relevant evidence. Similar views have also been taken by the Gauhati High Court. In the case of Arati Datta v. Eastern Tea Estate Pvt. Ltd., reported in (1985) 2 GLR 364 it has held that even the ex parte judgment must show that the plaintiff had a prima facie case; Again in the case of Mahaur Prasad v. Purushottam Agarwalla, reported in 1993 (2) GLJ 339 this court has held that when the defendant is absent or a decree is passed ex parte it is the bounden duty of the court to be more careful and cautious so that no injustice is caused. The aforesaid authorities were again followed by this Court in the case of Smt. Renubala Nama and Others Vs. Smt. Renubala Das, .

6. In the case before us, there is no whisper or discussion of the plaintiffs' case. The trial court has also not given any finding as to on what basis the rent of Rs. 10,000/- has been awarded per month.

7. The above apart, from the various orders passed by the trial court, certified copy of which were placed before the court by the learned Addl. A.G., it appears that even after 15.12.20 UB, purportedly a date for proceeding ex parte, the court on its own fixed various dates" for filing of the written statement. Accordingly, written statement had been filed on 18.03.2009 and the case also proceeded for framing of issues. Only thereafter, the plaintiff objected to the acceptance of the written statement on the plea that the court" had already decided to proceed ex parte on 5.12.2008. Thereafter, the defendant filed an application under Order 9 Rule 13 of the CPC for vacating ex parte order. The said application was rejected by the impugned judgment solely on the ground that the petition was filed after the limitation period.

8. In our considered opinion, there was no need to file an application under

Order 9 Rule 13 CPC, inasmuch, as there was no ex parte decree before filing of the said petition. At best the defendants could have filed an application u/s 151 CPC, requesting the Court to formally accept the written statement, which was already filed on 18.03.2009.

9. Having regard to all the aspects of the matter we are of the opinion that it is a fit case wherein the case should be remanded back to the trial court for a fresh decision in accordance with law.

10. In the result, the appeal stands allowed.

11. The impugned judgment and decree are hereby set aside. Learned Senior Civil Judge-I is directed to take on record the written statement and proceed further to frame issues. In other words, the suit shall be decided afresh as a contesting case.