

(1989) 08 GAU CK 0018

In the Gauhati High Court

Case No : Civil Revision No. 122 of 1989

Tazabannisa

APPELLANT

Vs

Sadaruddin Ahmed

RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Civil Procedure Code, 1908 — Order 6 Rule 5

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 5

Citation : (1989) 2 GLJ 344 : (1989) 2 GLR 261

Hon'ble Judges : B.P.Saraf, J

Bench : Single Bench

Advocate : P.K.Goswami, M.Das, Advocates appearing for Parties

Judgement

1. Whether a plea of nonjoinder falls within the scope of Order 6 Rule 5 of Code of Civil Procedure, 1908 (hereinafter "C. P. C.") is the sole question for determination in this petition. The petitioners were plaintiffs in a suit filed in the Court of Munsiff against the order passed by the SubDivisional Officer in a perfect partition case. As some of the recorded owners were dead at the time of filing of the suit, their legal representatives were made proforma defendants. The main defendants, being defendant Nos. 1 to 3 filed written statement wherein one of the plea taken was that the suit was bad for nonjoinder of all the heirs of the recorded owner. On the aforesaid pleading in the written statement, an issue was also framed Whether the suit is bad for nonjoinder of all the heirs of the recorded owners.

2. The plaintiffs thereupon filed a petition under Order 6 Rule 5 of the C. P. C. praying for a direction to the main defendants to supply the names and addresses of the heirs of the deceased recorded owners who according to them had not been joined as parties, f he petition was objected to by the defendants. The learned Munsiff by order dated 26. 4. 82 dismissed the petition on the ground, inter alia, that the plea of nonjoinder did not fall within the scope of Order 6 Rule 4 or 5 of C.P.C. The aforesaid order has been challenged in the

present petition.

3. Mr. P. K. Goswami, learned counsel for the petitioners submitted that the learned Munsiff misinterpreted Order 6 Rule 5 of C. P. C. and committed jurisdictional error in rejecting the petition. I have considered the submission of the learned counsel and perused the order passed by the learned Munsiff. Rule 5 of Order 6 of C. P. C. reads as follows :

?Rule 5. Further and better statement, or particulars.A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.?

4. It may be observed that Order 6 deals with pleadings. Pleadings has been defined in Rule 1 to mean plaint or written statement. The object and purpose of pleadings is to enable the adversary party to know the case it has to meet in order to have a fair trial. No party can go beyond the pleadings. In the absence of pleadings evidence, if any, produced by the parties cannot be considered. It is therefore, imperative that essential material facts should be set out clearly and distinctly in the pleadings. It is also the duty of the Court to see that the parties plead their case fully and clearly so that each side know the case of the other. It is in this context we have to read Rule 5 of Order 6 which empowers the Court to order the parties to furnish a further and better statement of the nature of the claim or defeace or further and better particulars of any matter stated in any pleading. If the Court on an application filed by one of the parties or otherwise it satisfied that what had been pleaded in the plaint or the written statement is vague or insufficient and further particulars could be furnished by the party concerned, it should direct the furnishing of such particulars. This power is not restricted to any particular claim or defence but it extends to "any pleading". Pleading, as stated earlier, has been defined to mean a plaint or written statement. The expression "pleading" is thus wide enough to take within its sweep all pleas taken by the parties in the plaint or written statement. The plea of nonmaintainability of a suit on the ground of nonjoinder of parties or heirs of the recorded owners is also a pleading. A defendant who raises the plea of nonjoinder of parties must specifically state who are the persons who ought to have been impleaded. This is necessary to enable the Court to decide how far their absence would affect the "decision in the suit. If it is not so stated and the pleading is found to Be vague or lacking requisite particulars the Court can definitely ask the defendants to furnish necessary particulars, i. e., the names of the legal heirs who according to them, have not been impleaded as parties. If the Court fails to do so, it shall amount to refusal to exercise the judicial discretion vested in it under Rule 5. It will lead to miscarriage of justice. It is, therefore, incumbent on the part of the Court to pass necessary orders under Rule 5 of Order 6, if it is satisfied that the facts and circumstances of the case so require.

5. . In the instant case, the learned Munsiff erroneously interpreted Rule 5 of Order 6 and held that the plea of nonjoinder of parties did not fall within the

purview of the same. On the basis of such erroneous interpretation of law, the petition was rejected. I have perused the facts of the case. In the written statement, nonjoinder of the heirs of recorded owners has been pleaded. On the basis of aforesaid pleading, as stated above, a specific issue has been framed. The said issue goes to the root of the case. From the pleadings, the case of the defendants is not clear to the plaintiffs. The plaintiffs prayed for direction to furnish better particulars of their pleading. The Court should have allowed the same. No harm could have been caused to anybody by such an order. On the other hand, it would have helped the parties to know better the case of each other. The particulars asked for relating to matters stated in the pleadings were necessary for proper disposal of the case. It was, therefore, incumbent on the part of the Court to issue necessary direction to the defendant to furnish the particulars asked for by the plaintiffs under Rule 5 of Order 6. By not doing so, the learned Munsiff failed to exercise judicial discretion vested in it. The impugned order passed by the learned Munsiff is, therefore, erroneous.

6. In view of the aforesaid discussion, the impugned order dated 26. 4. 82 passed by the learned Munsiff is set aside. He is directed to issue necessary order asking the defendants to furnish the names and addresses of the legal heirs of the deceased recorded owners.

7. The petition is allowed. No order as to costs.