



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

C.R.P. No. 07 of 2023

1. Ms. Tashi Doma Dorjee,
2. Ms. Tenzing Gakila
Both daughters of Shri T.P. Dorji,
Both resident of D.C. Building,
Lall Market,
P.O. & P.S. Gangtok,
East Sikkim, Pin No.-737 101.

..... Revisionists

Versus

1. Pathing Gumpa Managing Committee,
Lingkey Machong (Rinchenchi Gumpa),
Bara-Pathing,
P.O. & P.S. Pakyong,
East Sikkim, Pin -737 106
Represented by its constituted Attorney
Shri Tshering Bhutia
Aged about 73 years,
Son of late Wangchuk Bhutia,
Permanent resident of Barapathing,
P.O. & P.S. Pakyong,
Sikkim, Pin-737 106.
2. The Sub-Divisional Magistrate,
Gangtok, East Sikkim, Pin-737 101.
3. The District Registrar,
Gangtok, East Sikkim, Pin-737 101.

..... Respondents

Application under section 115 read with section 151 of the Code of the Civil Procedure, 1908.

Impugned Order dated 20.06.2023 passed by the learned Civil Judge, Gangtok Sikkim rejecting the application of the revisionist nos. 1 and 2 under Order VII Rule 11 read with section 151 of the Code of Civil Procedure, 1908 in Title Suit No.20 of 2020.

Appearance:

Mr. T. B. Thapa, Senior Advocate with Mr. Ranjan Chettri,
Mr. Khem Raj Sapkota and Ms. Chandrika Maya Karki,
Advocates for the Revisionists.



Respondent no.1. None.

Mr. Yadev Sharma, Government Advocate, Mr. Shakil Raj Karki and Mr. Sujan Sunwar, Assistant Government Advocates for Respondent nos. 2 and 3.

Date of hearing : 04.10.2023 & 06.10.2023.

Date of Order : 06.10.2023

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. The matter is taken up before issuance of notice. Heard Mr. T. B. Thapa, learned Senior Counsel for the defendant nos. 1 and 2 (the revisionists). The revisionists are aggrieved by rejection of an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (the CPC).
2. The suit was instituted by Pathing Gumpa Managing Committee as the plaintiff (respondent no.1) against the revisionists as well as the Sub Divisional Magistrate and the District Registrar as defendant nos. 3 and 4 (the respondent nos. 2 and 3). The application for rejection of the plaint was on two primary grounds. The first ground was that the plaint does not disclose any cause of action and the second ground was that it is barred by law of limitation.
3. During the course of the extensive arguments made by the learned Senior Counsel for the revisionists it is



submitted that clever drafting has given the plaint an illusion of a cause of action. However, on close scrutiny it is a vexatious and mischievous suit without any cause of action.

4. Taking this Court to the pleadings as well as the prayers in the plaint the learned Senior Counsel submitted that the prayer (i) and (ii) are covered by Article 58 and 59 of the Limitation Act, 1963 and therefore, barred by limitation. It is further submitted that prayer (iii) and (iv) would be covered by Article 113 of the Limitation Act, 1963 and therefore, also barred by time as the plaint was filed in December, 2020 and admittedly the cause of action arose in the year 2015.

5. The judgment of the Supreme Court in ***M.T.W. Tenzing Namgyal & Ors. vs. Motilall Lakhotia & Ors.***¹ was cited by the learned Senior Counsel to impress upon this Court that the Trial Court in a case of this nature was bound to enquire or investigate the question of title and could not have decreed the suit merely on the basis of the entries in the revenue records.

6. The learned Senior Counsel relied upon a paragraph in the judgment rendered by the Supreme Court

¹ (2003) 5 SCC 1



in **Nagar Palika, Jind vs. Jagat Singh, Advocate**² in which judgment of **Perry vs Clissold**³ has been quoted as under:

“It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.”

The aforesaid view was approved by this Court in the case of Nair Service Society Ltd. v. K.C. Alexander [AIR 1968 SC 1165 : (1968) 3 SCR 163] . This Court said in connection with the plaintiff of that case that he being in peaceful possession was entitled to remain in possession and only the State could evict him. It was further said that the action of the Society was a violent invasion over the possession of the plaintiff. It was pointed out:

“... the law as it stands in India the plaintiff could maintain a possessory suit under the provisions of the Specific Relief Act in which title would be immaterial or a suit for possession within 12 years in which the question of title could be raised.”

7. The learned Senior Counsel also relied upon another rendition of the Supreme Court in **C.S. Ramaswamy vs. V.K Sentil and Ors**⁴. He drew the attention of this Court to paragraph 7 and 8 thereof which in fact is the quotation from the judgment of the Supreme Court in **Sopan Sukhdeo Sable vs. Assistant Charity Commissioner**⁵. In the concerned paragraphs the Supreme Court examined its various earlier judgments and ultimately held that applying the law laid

² (1995) 3 SCC 426

³ 1907 AC 73: 76 LJ CP 19

⁴ AIR 2022 SC 4724

⁵ (2004) 3 SCC 137



down by it and on exercise of the powers under Order VII Rule 11 of the CPC to the facts of the case, the courts below had materially erred in not rejecting the plaint in exercise of the powers under Order VII Rule 11 (d) of the CPC. It was noticed that the respective suits were filed after a period of 10 years from the date of the execution of the registered sale deeds. Considering the peculiar facts of the case the Supreme Court opined that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which otherwise are barred. In fact this is the real thrust of the arguments made by the learned Senior Counsel before this Court also.

8. Order VII Rule 11 of the CPC is a special remedy empowering the Court to summarily dismiss a suit at the threshold on being satisfied that it should be terminated on the grounds enumerated therein. Order VII Rule 11 (a) of the CPC provides for rejection of the plaint when it does not disclose a cause of action. Cause of action means every fact which would be necessary for the respondent no.1 to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts which are necessary for the respondent no.1 to prove in order to entitle him to the reliefs claimed in the suit. The cause of action must be discernible from a reading of the plaint in its entirety and



not based on isolated sentences therein. It is the duty of the court examining the plaint to determine whether the plaint discloses a cause of action by reading the averments in the plaint, read in conjunction with the documents relied upon. Addition or subtraction to the averments in the plaint is not permitted at this stage. If the allegations in the plaint prima facie show a cause of action the court cannot embark upon an inquiry about its truthfulness. A meaningful reading of the plaint is necessary and if it is found that it is manifestly vexatious or without any merits in the sense that it does not disclose any cause of action, the plaint must be mandatorily rejected.

9. Order VII Rule 11 (d) of the CPC permits the Court to reject the plaint where the suit appears from the statement in the plaint to be barred by any law. A rejection of the suit on the ground that the same is barred by limitation must be discernable again from the statement in the plaint without any addition or subtraction. It is also well settled that when the issue of limitation is a mixed question of fact and law then a proper issue is required to be framed and tried.

10. The plaint consists of 16 paragraphs. It is the case of the respondent no.1 that they are the absolute owner of the landed property being Khatiyani No.776, plot



not 499 having an area of 14.3960 hectares, situated near Tashi View Point, under Shotak Revenue Block, Lingdok Ellaka, Gangtok, East Sikkim. The respondent no.1 have also placed the registered "*sale/gift deed, khatiyan parcha and the map*" in support of the averments in the plaint. According to the respondent no.1 the said plot of land was gifted/donated to them in the year 1979 by the then Chogyal of Sikkim for construction of Gumpa but they registered the sale deed only in the year 2003 as they were simple monks and did not feel it necessary to do so holding the view that nobody would dare to encroach upon the land of the Chogyal of Sikkim. It is their specific case that on verification of their land in the year 2015, it came to light that their land on the south side was encroached by the revisionists and they had fraudulently managed to transfer the title of the said encroached land in their joint names in the year 1987 itself in the record of rights. The respondent no.1 also specifically averred that in the month of February 2015 they came to learn that some construction is being carried out on the encroached land of the respondent no.1 by the father of the revisionists who is retired government employee. On a reading of the averments in the plaint it is also clear that they had earlier approached the respondent no.2 who passed certain orders and ultimately the



respondent no.1 filed the present suit. The respondent no.1 have also clearly averred that cause of action for filing the suit first arose on and from 09.03.2015 and thereafter, on subsequent dates. On such averments in the plant the following reliefs were sought for:-

“(i) A decree declaring that the plaintiff is the absolute owner of the suit property.

(ii) A decree cancelling the Record of Right of the defendant nos. 1 and 2 from the suit property maintained and held in the office of defendant no.3.

(iii) A decree ordering the defendant nos. 1 and 2 to transfer the title of the suit property in the name of the plaintiff or ordering the defendant no.3 to make necessary correction in the plot number and name of block of the suit property.

(iv) A decree ordering the defendant nos. 1 and 2 to hand over the possession of the suit property to the plaintiff.

(v) Cost of the proceeding.

(vi) Any other relief or reliefs as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

11. The submission of the learned Senior Counsel that prayer (i) is the substantive prayer for declaration and without granting it the other prayers which are consequential in nature cannot be granted may not be correct. The averments in the plaint make it clear that the respondent no.1 claimed title of the disputed land based on a registered title deed. In such view of the matter it cannot be held that the rest of the prayers could not have been claimed independent of prayer (i).



12. The submission of the learned Senior Counsel that prayer (iv) is also covered by Article 113 may not also be correct. Prayer (iv) is a prayer for getting back possession of the disputed land allegedly encroached by the revisionists. Prima facie it appears that therefore, prayer (iv) would be covered by Article 65 of the Limitation Act, 1963 which deals with suits relating to the decrees and instruments for possession of immovable property or any interest therein based on title. In such case the period of limitation is 12 years and the time from which period begins to run would be when the possession of the revisionists becomes adverse to the respondent no.1. Even if one was to consider that the time began to run from the year 2015 the suit would still be within time. Order VII Rule 11 authorises the Court to reject the plaint in its entirety. Thus, if one of the prayers cannot be rejected as being barred by law the application for rejection of plaint under Order VII Rule 11 of the CPC cannot be allowed.

13. A perusal of the averments in the plaint coupled with prayers (iii) and (iv) also reflect that what the respondent no.1 is aggrieved of is the alleged act of the revisionists of encroaching upon part of their landed property in the year 1987 which they learnt only in the year 2015. They are also aggrieved by the construction activities



done on the encroached property of the respondent no.1 about which they again purportedly learnt in the year 2015 only. The statement in the plaint read with the prayers thus seems to suggest that they desire to reclaim possession of the encroached portion of their landed property now in the possession of the revisionists. As noticed earlier the respondents have asserted their title through a registered sale/gift deed which has been placed for inspection before the Court. Order VII Rule 11 of the CPC is a provision to throw out such plaints which are visibly vexatious and discloses no cause of action. The grievances narrated by the respondent no.1 in the plaint, however, suggest that they do have a cause of action. Allowing the application under Order VII Rule 11 of the revisionists would have the effect of annulling a registered gift/sale deed which the respondents have placed before the Court for its perusal and examination. This is not a case which prima facie reflects that it is vexatious or mischievous and does not discloses a cause of action. This Court is therefore, of the view that the learned Trial Court has rightly rejected the application under Order VII Rule 11 of the CPC. The rejection is upheld leaving all questions open to the learned Trial Court to decide after framing



necessary issues based on the respective pleadings during the trial.

14. The observations made in this judgment is for the limited purpose of deciding the present revision petition challenging the rejection of the application under Order VII Rule 11 of the CPC preferred by the revisionists. Needless to say that the learned Trial Court shall not be influenced by any such observation and shall decide the case as per the facts pleaded and the law applicable. As the revision petition is being dismissed the pending application is rendered infructuous.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/