

GAHC040000772023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : CRP/3/2023

Munpo Taiju and Anr.
Son of Tingkhap Taiju,
Special Power Attorney Holder of M/S Rangfrah Wood Industry,
Situated at 9th Mile MC Road, PO Namdang, Arunachal Pradesh,
a Permanent Resident of Village Old Changlang, PO/PS Changlang, District
Changlang, Arunachal Pradesh.

2: Tinghaap Taiju
S/o Late Kamren Taiju, a proprietor of M/S Rangfrah Wood Industry,
situated at 9th mile MC road, P.O Namdang, Arunachal Pradesh.

VERSUS

Devendra Singh Rathore
S/op Shri HBS Rathore,
Fathegarh road,
C/o Rajputana Hotel
Near Badhour Mandir, District Farkkabad, Uttar Pradesh,
Presently residing at 9th Mile, Rangfarh Wood Industries Changlang, Arunachal
Pradesh.

Advocate for the Petitioner : L. Bam

Advocate for the Respondent : Khoda Tama

**BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 21-09-2023

Heard Mr. L. Bam, the learned counsel for the petitioner and also heard Mr. K. Tama, the learned counsel for respondent.

2. This is an application under Section 115 of Code of Civil Procedure, 1908 filed by the petitioner challenging the order dated 07.12.2022 passed in Misc.(J) Case No.02/2022 corresponding to Title Suit No.01/2022 whereby, the learned Civil Judge (Senior Division) Changlang rejected the application filed by the petitioner under Order VII, Rule 11 of Code of Civil Procedure, 1908. The petitioner also in the same revision petition has challenged the order dated 21.02.2022 passed by the same Court in connection with the Title Suit No.01/2022 whereby, revocation of general power of attorney dated 09.02.2022 has been stayed.

3. The brief facts of the case is that the petitioner No.2, namely, Shri Tinghaap Taiju is the proprietor of M/S Rangfrah Wood Industry, situated at 9th mile MC road, Namdang, Arunachal Pradesh. On 19.11.2015 a deed of general power of attorney was entered

between Shri Thinghaap and one Shri Devendra Singh Rathore, whereby, Shri Devendra Singh Rathore was duly authorised as power of attorney holder to look after the affairs and management of the said firm with specific condition that renewal of the attorney will depend on the satisfactory performance of the power of attorney holder.

4. On 06.11.2019 a deed of lease agreement has been entered into between the same parties, whereby, the petitioner No.2 has agreed to grant lease of aforesaid firm in favour of Shri Devendra Singh Rathore for a period of 10(ten) years, commencing from 01.11.2019 at annual lease rent.

5. Subsequently, on 05.10.2020 another deed of lease agreement has been executed between the same parties, whereby, Devendra Singh Rathore agreed to run the said factory on annual lease rent of Rs.18,00,000/-(Rupees Eighteen Lakhs)only per year to the lessor. As per the terms of the lease, in case of failure to pay the lease rent per year as agreed time period, the lessor shall serve 30(thirty) days notice to lessee to vacate the factory i.e. machineries and premises. Thus, in the event of failure to pay the lease rent on time the lessor shall withdraw the power of attorney from the lessee without any further notice followed by removal of raw materials from

the factory premises.

6. The petitioner No.2 has revoked the general power of attorney on 09.02.2022 executed between him and the respondent for personal reasons and consideration as well as for violation of certain terms and conditions of power of attorney by that attorney holder.

7. Being aggrieved of the revocation letter dated 09.02.2022, the respondent/plaintiff on 17.02.2022 filed a title suit being Title Suit No.01/2022 before the Court of Civil Judge (Senior Division), Changlang, Arunachal Pradesh praying for quashing and setting aside revocation letter dated 09.02.2022 under Section 108 of Transfer of Property Act, 1882, read with Section 37(i) of Specific Relief Act, 1963. The respondent/plaintiff has also filed an Injunction application being Misc. Petition No.MS(I) Case No.01/2022 along with Title Suit No.01/2022 under Order XXXIX, Rule 1 and 2 of CPC praying for stay of operation of deed of revocation of power of attorney dated 09.02.2022. Vide order Dated 21.02.2022, the learned Civil Judge (Senior Division) without jurisdiction has admitted the title suit and passed order by staying the operation of revocation of power of attorney.

8. Subsequently, the petitioner filed interlocutory application under Order XXXIX, Rule 4 of Code of Civil Procedure, 1908 for modification/vacation/alteration/set aside of ex-parte injunction order dated 21.02.2022 and same has been registered as I.A(Civil) No.05/2022 and the same is pending before the learned Civil Judge (Senior Division) for disposal. The petitioner filed another interlocutory application in Misc.(J) Case No.02/2022 under Order VII, Rule 11 of CPC for dismissal/rejection of plaint. And vide the impugned order dated 07.12.2022, the learned Civil Judge (Senior Division) has dismissed the same.

9. On 01.01.2023, the petitioner No.2 by invoking the termination clause as stipulated in lease deed dated 05.10.2020 has issued a 30(thirty) days notice for termination of the same lease deed to the respondent as the respondent has failed to clear the annual lease rent for the year 2022 with a specific direction to vacate the factory after 30.01.2023. Subsequently, the learned Civil Judge (Senior Division) has dismissed the Misc.(J) Case No.02/2022 filed by the petitioner. Hence, this revision.

10. It is submitted by the learned counsel for the petitioner that learned Civil Judge (Senior Division) erred in law while passing the order dated 17.02.2022, whereby the learned Civil Judge (Senior

Division) had admitted the title suit without pecuniary jurisdiction and in violation of Section 14 of Arunachal Pradesh Civil Court Act, 2021 as the plaintiff has not made any specific statement regarding the pecuniary jurisdiction of the Court rather in Title Suit No.01/2022 plaintiff has prayed for an amount of Rs.8,00,000/-(Rupees Eight Lakhs) only as damage. But subsequently, in Misc.(J) Case No.01/2022, the plaintiff made a categorical statement that for the purpose of pecuniary jurisdiction of this Court, the suit was valued at Rs.5,00,000/-(Rupees Five Lakhs)only.

11. It is also the submission of the learned counsel for the petitioner that the respondent/plaintiff has not filed the Title Suit No.01/2022 for declaration of right, title, interest and permanent injunction, rather respondent/plaintiff has filed the Suit for quashing and setting aside the revocation letter dated 09.02.2022 under Section 108 of Transfer of Property Act, 1882 read with Section 37(i) of Specific Relief Act, 1963 and the prayer made in the plaint is the subject matter relating to the revocation of power of attorney dated 09.02.2022, unregistered lease deed dated 06.11.2019 and 05.10.2020. The respondent/plaintiff never challenged the unregistered lease deed dated 06.11.2022 and 05.10.2020 as such the same is liable to be quashed and set aside in the interest of justice.

12. It is further submitted by the learned counsel for the petitioner that the learned Civil Judge (Senior Division) has without the application of mind and in most mechanical manner without appreciating the laws and facts in proper perspective passed the impugned order dated 07.12.2022 in Misc.(J) Case No.02/2022 though the petitioner/defendant vehemently raised objection regarding maintainability of the Title Suit No.01/2022 on the ground of pecuniary jurisdiction as the Civil Judge (Senior Division) has no jurisdiction to entertain the Title Suit No.01/2022 and the same lies with the Civil Judge (Junior Division). As such, said impugned order is illegal and arbitrary which is liable to be set aside.

13. In response, the learned counsel for the respondent would submit that the trial Court has rightly rejected the plaint under Order 2, (Rule 2) of the CPC, as such order has force of decree under Order 7, Rule 11 (a) of the CPC, against which, regular appeal under Section 96 read with Order 41 of the CPC would lie before the appellate Court and, as such, the revision is not maintainable and it be dismissed accordingly. On the other hand, the learned counsel for the petitioner would submit that revision would lie as the jurisdictional error has been committed by the trial Court in rejecting the plaint and thereby dismissing the suit.

14. In order to decide the plea raised at the Bar, it would be profitable to refer to the definition of the term “decree” in CPC, Section 96 CPC and Section 115 of the Code of Civil Procedure, which are reproduced herein below;

Section 2(2) of the Code defines “decree” to mean the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

- a) any adjudication from which an appeal lies as an appeal from an order, or
- b) any order of dismissal for default.

Explanation.- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposed of the suit. it may be partly preliminary and partly final;

Section 96 of the Code provides for appeals from, original decree:

“96. Appeal from original decree.-(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees.]]

Section 115 of the Code provides for revision:

“115. Revision.- [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

[(3) A revision shall not operate as a stay of suit or other proceeding

before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation--.In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]

15. The short question for consideration would be whether order rejecting plaint would have the force of decree within meaning of Section 2(2) of the CPC and whether appeal would lie against the order rejecting plaint.

16. The Hon'ble Supreme Court in the case of ***Chandi Prasad Vs. Jagdish Prasad*** reported in ***(2004) 8 SCC 724*** has held that "decree" to mean the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final.

17. The question as to whether the order rejecting the plaint would have force of decree and would be covered by Section 2(2) of the CPC also came up for consideration before Supreme Court in the case of ***Shamsher Singh Vs. Rajinder Prashad and others***, reported in ***1973 2 SCC 524***, in which the Hon'ble Supreme Court has held as under:-

"3.....In the present case, the plaint was rejected under Order 7, Rule 11 of the C.P.C. Such an order amounts to a decree under Section 2(2) and there is a right of appeal open to the plaintiff."

18. The Supreme Court in the case of ***Rishabh Chand Jain Vs. Ginesh Chandra Jain*** reported in ***2016 SCC online SC 372*** has held that order rejecting application under Order 7 Rule 11 CPC has a force of decree and only remedy is appeal under Section 96 read with Section 41 of the Code and no revision lies under Section 115 of the Code of Civil Procedure. Relevant paragraph of the Judgment states as under:-

"In terms of Section 2(2) of the Code, in case, the court adjudicating the case, conclusively determines the rights of the parties with regard to any one or more or all of the matters in controversy in the suit, the requirement of decree is satisfied. Such determination can be preliminary or final. Rejection of a plaint is deemed to be a decree under Section 2(2) of the Code. Only two orders are excluded - (i) any adjudication from which an appeal lies as an appeal from an order and (ii) any order orders. The impugned order does not come under Order XLIII. The order has conclusively determined the rights of the parties with regard to one of the matters in controversy in the suit, viz., Res Judicata. True, it is not an order passed on framing an issue. But at the same time, there is adjudication on the controversy

as to whether the suit is barred by Res Judicata in the sense there is a judicial determination of the controversy after referring to the materials on record and after hearing both sides. The impugned order dismissing the suit on the ground of Res Judicata does not cease to be a decree on account of a procedural irregularity of non-framing an issue. The court ought to treat the decree as if the same has been passed after framing an issue. The court ought to treat the decree as if the same has been passed after framing the issue and on adjudication thereof, in such circumstances. What is to be seen is the effect and not the process. Even if there is a procedural irregularity in the process of passing such order, if the order passed is a decree under law, no revision lies under Section 115 of the Code in view of the specific bar under sub-section (2) thereof. It is only appealable under Section 96 read with Order XLI of the Code. The order passed by the trial Court is a composite order on rejecting of the plaint as there is no cause of action and dismissal of the suit as not maintainable on the ground of Res Judicata. Both aspects are covered by the definition of decree under Section 2(2) of the Code and, therefore, the remedy is only appeal and not revision even if there is any irregularity in passing the decree."

19. Reverting to the case in hand, it appears that the order dated 17.02.2022 was passed by the learned Civil Judge (Senior Division)

rejecting the prayer of the petitioner by holding that the instant case is found not to be a fit case by exercising the power under Order VII, Rule 11 of the CPC, is warranted. Subsequently, the order dated 21.02.2022 passed by the learned Civil Judge (Senior Division) appears to be interlocutory order. As per the Section 115 of CPC, after amending the Section 115 of CPC by CPC (Amendment) Act 46 of 1999 coming into effect from 01.07.2002, revision under Section 115 CPC is prohibited against any interlocutory order.

20. In view of the above discussion, by not going into the merit of the case, this Court is of the opinion that the instant civil revision is not maintainable and is dismissed, reserving liberty in favour of the petitioner to file an appeal in accordance with law.

21. No order as to cost.

The Civil Revision petition is disposed of accordingly.

JUDGE

Comparing Assistant