

GAHC010006522011



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

Case No. : RFA/27/2011

KUMUD BAISHYA AND ANR
S/O LATE GUNARAM BAISHYA, R/O SUALKUCHI, P.S. SUALKUCHI, DIST.
KAMRUP, ASSAM.

VERSUS

EVA BANDANA BASUMATARI AND ORS

Advocate for the Petitioner : MR.H BARUAH

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 04.10.2023

Heard Mr. H. Baruah, learned counsel for the appellants. Also heard Mr. P.K. Kalita, learned senior counsel, assisted by Mr. K.R. Borooah, learned counsel for the respondent nos.1 to 6.

2. This appeal under section 96 CPC is directed against the judgment and decree dated 03.05.2011, passed by the learned Civil Judge No.1, Kamrup,

Guwahati in T.S. No. 54/2009. By the said judgment and decree, the learned trial Court had accepted the application filed by the plaintiffs and the defendant nos.1 and 2 under Order XXIII Rule 3 read with Section 151 CPC by permitting withdrawal of the suit on compromise. The terms and conditions of the compromise deed was marked with letter 'A' for being part of the decree.

3. The predecessor-in-interest of the respondent nos.1 to 6 were the plaintiff in T.S. No. 54/2009. The respondent no.7 is the defendant no.1 in the said suit. The respondent no.8 is the defendant no.2 in the said suit. The defendant no.3 is not a party in this appeal and that the appellants were arrayed as defendant nos.4 and 5 in the said suit. The defendant no.6 and proforma defendant no.7 are not parties in this appeal.

4. In the proceedings of T.S. No. 54/2009, the appellants, who were the defendant nos.4 and 5 had filed their counter claim. However, as referred hereinbefore, during the pendency of the suit, a compromise petition was filed under Order XXIII Rule 3 read with Section 151 CPC, wherein the appellants (i.e. counter claimants) were not parties, and the learned trial Court had passed the impugned decree in terms of the compromise agreement dated 30.04.2011 between the parties.

5. The learned counsel for the appellants has submitted that the learned trial Court had passed the decree in the suit without taking into account the counter claim filed by the appellants as defendant nos.4 and 5.

6. The learned senior counsel for the respondent nos.1 to 6 has submitted that the appellants had never moved the learned trial Court to proceed with their counter claim and he also submits that by abandoning the counter claim, the appellants have filed a separate suit, which is now pending

for adjudication before the learned trial Court.

7. In this case, as already indicated hereinbefore, the predecessor-in-interest of the respondent nos.1 to 6 were the plaintiff and that there was a compromise between the respondent nos.1 to 6 (i.e. substituted plaintiffs) and the respondent nos.7 and 8. Under the provisions of Order XXIII Rule 3 CPC, it is found that it is otherwise permissible for the concerned parties to enter into a lawful agreement of compromise in respect of whole or any part of the subject matter of the suit. Therefore, as there is nothing on record to show that the agreement for compromise dated 30.04.2011 was not otherwise lawful, insofar as the compromise decree is concerned, the present appellants cannot be said to be the parties aggrieved.

8. By the impugned judgment and decree, the learned trial Court has not non-suited the appellants in respect of their counter claim. Therefore, the counter claim can still be lawfully pursued by the appellants. It is observed from the provisions of Order VIII Rule 6 A(2) CPC that counter claim shall have the same effect as a cross suit so as to enable the Court to pronounce a final judgment in the said suit, both on the original claim or on the counter claim. Therefore, notwithstanding that the suit has been compromised, the counter claim would still be adjudicable.

9. As per the scheme of section 96 CPC, in order to interfere with the trial Courts judgment and decree, the requirement of law is that the appellate Court should formulate the point for determination and revisit the issues, which have been decided by the learned trial Court. However, in the present case in hand, there were no issues which were decided finally by the learned trial Court and the suit was decreed on the basis of the compromise agreement.

10. The Court finds that the order of compromise has resulted in passing of the impugned judgment and decree which does not materially affect the rights of the present appellants, who were defendant nos.4 and 5 in the suit as their counter claim still remains on file despite the passing of the judgment and decree on compromise. Therefore, insofar as the challenge to the impugned judgment and decree is concerned, the said challenge would fail as the appellants cannot be said to be the party aggrieved on the compromise made between the respondent nos.1 to 6 on one hand and respondent nos.7 and 8 on the other hand. Therefore, notwithstanding that the suit was permitted to be decreed on compromise, the counter claim, if not otherwise dismissed subsequently still remains open for adjudication.

11. The Court finds force in the submission made by the learned senior counsel for the respondent nos.1 to 6 that as the trial Court had not non-suited the appellants in respect of the counter claim. Therefore, the appellants could have moved the learned trial Court for proceeding forthwith with the adjudication of their counter claim. There is nothing on record to show that the said course was taken by the appellants, which is confirmed by the learned counsel for the appellants that the appellants had not moved the learned trial Court to proceed with their counter claim.

12. In view of the discussions above, as there was no order on counter claim, this appeal appears to be an unnecessary step by the appellants. Be that as it may, as it is submitted by the learned counsel for the appellants that as per the LCR, the counter claim has not been dismissed owing to the compromise made between the respondent nos.1 to 6 and respondent nos.7 and 8, it would be open to the learned trial Court to proceed with the adjudication of the counter claim.

13. The parties, who are duly represented by the learned counsel/senior counsel today shall appear before the learned Civil Judge No.1, Kamrup (Metro), Guwahati on 03.11.2023 and on the said date, the appellants by producing a certified copy of this order, shall await further instruction from the said learned Court.

14. In other words, the appellants and the respondent nos.1 to 8 shall not be entitled to fresh notice by the Court for resumption of the counter claim proceedings in connection with T.S. No. 54/2009, which is restored to file for further adjudication, if the counter claim has not otherwise been dismissed for non-prosecution. It would be open to the said learned Court to renumber the counter-claim as a separate suit, if so desired.

15. Interim order, if any stands vacated.

16. Let the case record be returned back.

17. Accordingly, this appeal stands disposed of without going into the merit of the case.

JUDGE

Comparing Assistant