

GAHC010012222014



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

Case No. : CRP/224/2014

SMTI. AJANTA CHOUDHURY
W/O SRI SANDEEP CHOUDHURY AGED ABOUT 42 YEARS, RESIDENT OF
HOUSE NO. 23/24 REHABARI, GUWAHATI- 781008, IN THE DIST. OF
KAMRUP M, ASSAM.

VERSUS

SRI HITEN CHANDRA DAS and 2 ORS.
S/O LT. DHIREN CHANDRA DAS ALIAS DHIRENDRA CHANDRA DAS R/O
JYOTIKUCHI, DHOPOLIA, HOUSE NO. 77, GUWAHATI- 40, P.O. SAUKUCHI,
DIST. KAMRUP M, ASSAM.

2:SRI RANJAN KUMAR DAS
S/O LT. DHIREN CHANDRA DAS ALIAS DHIRENDRA CHANDRA DAS R/O
JYOTIKUCHI
DHOPOLIA
HOUSE NO. 77
GUWAHATI- 40
P.O. SAUKUCHI
DIST. KAMRUP M
ASSAM.

3:SRI KANDARPA DAS
S/O LT. DHIREN CHANDRA DAS ALIAS DHIRENDRA CHANDRA DAS R/O
SANTIPUR
A.T. ROAD
NEAR SWAGAT HOSPITAL
GUWAHATI-9
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : D DAS

Advocate for the Respondent : P K KALITA

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. Z. Mukit. Advocate.

For the Respondents : Mr. N. Alam, Advocate.

Date of Hearing : 02.05.2023, 11.05.2023

Date of Judgment : 21.07.2023

JUDGMENT & ORDER (CAV)

1. Heard Mr. Z. Mukit, learned counsel for the petitioner. Also heard Mr. N. Alam, learned counsel for the respondents.
2. The present application has been filed under Section 115 read with Section 151 of the CPC, 1908 challenging the order dated 25.04.2014 passed in Title Suit No. 17/2014 by the learned Civil Judge No. 1, Kamrup, Guwahati, whereby the learned Court below did not entertain the prayer of the petitioner to reject the plaint for alleged non-disclosure of any actionable cause.
3. The present petitioner is the defendant No. 1 in the Title Suit No. 17/2014 filed by the respondent Nos. 1 and 2 herein. The said suit was filed for declaration, cancellation of certain gift deeds, for partition, recovery of possession and permanent injunction.

4. It has been stated that a petition was moved by the present petitioner (respondent in the said Title Suit No. 17/2014) under Order 7 Rule 11 read with Section 151 of the CPC praying for rejection of the plaint on the ground there is no adjudicable cause of action against the defendants inasmuch as there was no adjudicable right of the plaintiffs and the proforma defendant over the suit properties.
5. It was also contended that there is no material to suggest any kind of relation between plaintiffs and the original land owner. Considering all aspects, the learned trial Court below had come to a conclusion that though the case of the plaintiff is very much remote, however it would not be wise and appropriate to hold that from the plaint no "cause of action" is disclosed and accordingly, such petition was rejected by the learned Court below under its order dated 25.04.2014.
6. An application under Order 7 Rule 11 of the CPC is to be determined looking only and / or taking note of the facts narrated in the plaint only and no other further consideration is required for exercise of such power. It is apparent that the learned trial Court has not dealt with the plaint and very cryptically passed the order and therefore, both the learned counsels has advanced arguments extensively on the pleadings of the plaintiff whether such plaint can be returned on the basis of the of the pleading available in the plaint. In aforesaid view of the matter, now let this Court record the pleaded case of the plaintiff.

7. The plaintiff pleaded as follows:-

- I. The plaintiff and proforma defendant No. 4 are sons of one late

Dhiren Chandra Das from the side of the first wife and the defendant Nos. 1 and 2 are the daughter and son respectively from the side of the second wife of said Late Dhiren Chandra Das namely Late Labanya Das.

- II. The said Late Dhiren Chandra Das was owner and pattadar of a plot of land measuring 3 Kathas and 1.58 Lechas covered by K.P. Patta No. 282 and Dag No. 1155 of Village Sahar – Ulubari Part-1, Mouza- Ulubari situated at Mahadevpur, Rehabari, Guwahati-8.
- III. Late Labanya Das who was the mother of the petitioner was an owner and pattadar of a plot of land measuring 6.21 Are covered by K.P. Patta No. 561 and Dage No. 1158 of village Sahar – Ulubari Part-1, Mouza – Ulubari which is contiguous and adjacent to K.P. Patta No. 282 as described hereinabove. It is contended that the plot of land measuring 6.21 Ares covered by K.P. Patta No. 561 and Dage No. 1158 of village Sahar – Ulubari Part-1, Mouza – Ulubari was purchased by Late Dhiren Chandra Das in the name of Late Labanya Das.
- IV. Late Labanya Das sold out a plot of land measuring 4.01 Are, out of the total land measuring 6.21 Ares to one Gayatri Devi. Accordingly, a plot of land measuring 2.20 Ares remained in K.P. Patta No. 561 in the name of Late Labanya Das.
- V. It is contended that the said plot of land though purchased in the name of Late Labanya Das, but was purchased by Late Dhiren Chandra Das in the name of Late Labanya Das for betterment in

future life of Late Labanya Das.

- VI. As Late Dhiren Chandra Das was having apprehension in his mind that there may be some family dispute, he gifted the entire left out property of K.P. Patta No. 282 measuring 4.22 Ares in the name of Late Labanya Das, after gifting part of the same measuring 4.02 Ares to the defendant No. 2 i.e. the son of Late Dhiren Chandra Das from the side of Late Labanya Das.
- VII. It was pleaded that such gifts were executed with the consent and mutual understanding amongst the plaintiffs and defendants to the effect that till the life time of Late Labanya Das, she shall use and enjoy the same and after her death, the same shall be inherited jointly and equally by the plaintiffs, proforma defendant No. 4 and defendant No. 1.
- VIII. Late Labanya Das expired on 01.11.2013 due to her old age ailment and all her last rituals were done jointly by the plaintiffs, proforma defendant No. 4 and the defendant No. 2.
- IX. In the first week of December, 2013, when the plaintiff tried to know from the principal defendants regarding further course of action for partition and separation of the Schedule-A and Schedule-B land and structures, the defendant No. 2 informed that defendant Nos. 1 and 3 know about such partition and subsequently, defendant No. 4, informed the plaintiffs that the defendant No. 1 in collusion with defendant No. 3 had got executed some unknown documents in her favour by false representation before Late Labanya Das without giving

the plaintiffs any share there from and the plaintiffs are entitled for such share as per desire of their father Late Dhiren Chandra Das.

- X. Subsequently, they came to know that the two Gift Deeds being Deed No.1844/2001 dated 01.03.2001 and Deed No. 1814/2001 dated 28.02.2001 (Annexure-3 and Annexure -4 of the plaint) in respect of Schedule A and Schedule B plot of land got executed and manufactured by defendant No. 1, in collusion with defendant No. 3 behind the back of the plaintiffs and the proforma defendant No. 4.
- XI. It is also pleaded that there was no such intention of Late Labanya das for gifting out the entire Schedule A and B plot of land and structures standing thereon only to defendant No. 1, by depriving the plaintiffs.
- XII. Thereafter, the certified copies were obtained of the aforesaid deeds on 06.01.2014 and accordingly the suit was filed.

8. Arguments advanced by Mr. Z. Mukit, learned counsel for the petitioner.

Mr. Mukit, learned counsel for the petitioner submits the following:-

- I. The prayer No. 1 of the plaint on the face of it is hit by Sections 15 and 16 of the Hindu Succession Act, 1956 inasmuch as the steps son and daughter shall have no right to inheritance from the property of the step mother. In support of such contention Mr. Mukit, learned counsel relies on a decision of the Hon'ble Apex Court in the case of ***Lachman Singh –Vs- Kirpa Singh Ors*** reported in ***1987 2 SCC***

547 para 5 and 7.

- II. Mr. Mukit, learned counsel submits that from the reading of the plaint it is an admitted position that though no name of mother of the plaintiffs is disclosed in the plaint, however, they admittedly claimed to be steps sons and daughter from Late Dhiren Chandra Das from another wife and not from Late Labany Das and therefore, admittedly even if it is assumed, that they are sons and daughters of Late Dhiren Chandra Das, they can only be treated as steps sons and daughters of Late Labanya Das.
- III. Taking this Court to the paragraph Nos. 7, 8, 9, 10 and 13 of the plaint, Mr. Mukit, learned counsel argues that though there is a pleading that there was an understanding amongst the plaintiffs and defendants to the effect that the till the life time of Late Labanya Das, she shall use and enjoy the same and after her death, the same shall be inherited jointly and equally by the plaintiffs, proforma defendant No. 4 and defendant No. 1. However, nothing is discernible from the recital of the gift deeds. Further Mr. Mukit, learned counsel argues that the plaintiffs has failed to disclose any date of alleged family arrangement inasmuch as Late Labanya Das executed the gift deeds almost 10 years prior to her death. Therefore, on the face of it, there is no cause of action for the plaintiffs to proceed with the suit.
- IV. It is also not pleaded in the plaint that the gift deed executed by Late Dhiren Chandra Das to Late Labanya Das was a conditional gift deed nor there is no such recital in the said gift deed and therefore, it remains to be the absolute property of the Donee i.e. Late Labanya

Das and such property cannot be partitioned and distributed to the steps sons of Late Labanya Das inasmuch as they are not entitled for such partition under Sections 15 and 16 of the Hindu Successions Act, 1956.

- V. Taking to the pleading made at paragraph 13 of the plaint that the defendant No. 2 replied to the plaintiffs that the defendant No. 2 is not aware of any fact regarding the partition, Mr. Mukit, learned counsel submits that the document No. 4, which is a gift deed discloses that the defendant No. 2 i.e. Bhaskar Das was also an attesting witness of the Annexure-3 (Gift Deed). Therefore, from the documents annexed to the plaint and pleadings made apparently shows that the suit is nothing but a vexatious suit and said suit should not be allowed to be proceeded.
- VI. The other part of paragraph 13 of the plaint in which it is pleaded that the defendant No. 1 has intimated that in collusion with defendant No. 3, the gift deed has been executed is a story which cannot be relied upon on the face of it inasmuch as the defendant Nos. 1 and 3 are the donee of such gift deed.
- VII. The intention as stated that the Late Labanya Das was having no intention to execution of gift deed cannot raise any cause of action for cancellation of gift deed inasmuch as the plaintiffs has not disputed that Late Labanya Das has not executed such gift deed and therefore, the intention by virtue of the execution of the gift deed of Late Labanya Das itself is clear.

- VIII. Mr. Mukit, learned counsel taking paragraph 22 of the plaint wherein date of cause of action is explained, argues that cause of action dated 30.11.1993, is having no relevance, the date 28.05.1998 is the date of death of Late Dhiren Chandra Das, 28.02.2001 is the date when Schedule B land was gifted by Late Labanya Das to the defendant No. 1, 01.03.2001 is the date gift deed executed by Late Labanya Das to defendant No. 1 in respect of Schedule –A land, 01.11.2013 is the date of death of Late Labanya Das and 06.01.2014 is the date on which the certified copies of the gift deeds were obtained by the plaintiffs. Therefore, according to the plaintiffs itself there is no cause of action relatable to the alleged family partition. Therefore, the aforesaid paragraph clearly shows that the facts as pleaded cannot have any cause of action.
- IX. It is also contended that the original gift deed by which Late Dhiren Chandra Das gifted the properties to Late Labanya Das is not even under challenge and thus Late Labanya Das has become absolute owner by virtue of the said gift deed. In absence of challenge to the said gift deeds, the steps sons and daughter cannot claim any share of property.
- X. It is also contended that Late Dhiren Chandra Das expired on 28.05.1998 and as the plaintiffs claims their rights through Late Dhiren Chandra Das, they ought to have raised such share in the property on the death of Late Dhiren Chandra Das inasmuch as from the pleadings itself it is clear that the plaintiffs are aware of the execution of the gift deed by their father Late Dhiren Chandra Das in

favour of Late Labanya Das and such gift deed remains unchallenged till date. Therefore, the subsequent transfer cannot be challenged at this belated stage that too on the ground of claiming right over the property and not on the ground of any fraud or misrepresentation.

XI. Mr. Mukit, learned counsel further contends that by clever drafting an illusory cause of action is tried to be made out. The learned trial Court also took a view that the case of the plaintiff is very much remote. However without assigning any reason such application has been dismissed.

XII. In support of such contention, Mr. Mukit, learned counsel relied on various decisions of the Hon'ble Apex Court i.e.(i) ***Madanuri Sri Rama Chandra Murthy –Vs- Syed Jalal*** reported in ***(2017) 13 SCC 174 Para-7***, (ii) ***Raghwendra Sharan Singh –Vs- Ram Prasanna Singh (Dead) by Legal Representatives*** reported in ***(2020) 16 SCC 601 para 6.8, 6.9 and 7 to 10***, (iii) ***Ramisetty Venkatanna & Anr –Vs- Nasyam Jamal Saheb & Ors*** reported in ***2023 Live Law (SC) 373 para 5.1, 5.2, 5.3, 5.4 and 6***. and (iv) ***T. Arivandandam –Vs- T.V.Satyapal*** reported in ***(1977) 4 SCC 467 para 5***.

9. **The argument advanced by Mr. N. Alam, learned counsel for the respondents.**

Mr. Alam, learned counsel countering such argument submits as follows:-

I. In the given facts and pleading made in the plaint, there is no relevance of Sections 15 and 16 of the Hindu Succession Act, 1956

inasmuch as in the plaint, the share in the property is sought for by virtue of inheritance from Late Dhiren Chandra Das and not any inheritance from Late Labanya Das.

- II. Taking to paragraph 7 of the plaint, Mr. Alam, learned counsel submits that the said paragraph clearly depicts that the case of the plaintiffs is that Late Dhiren Chandra Das executed the gift deed after having consent and mutual understanding amongst the plaintiffs, proforma defendant No. 4 and defendant Nos. 1 and 2 respectively to avoid future family dispute till the life time of Late Labanya Das and therefore it is the pleaded case of the plaintiffs that the such mutual consent is required to be respected and therefore, there is no question of challenge to the execution of the gift deed inasmuch as such statement that gift deed was result of consent and mutual understanding amongst the parties and the claim of the property on the basis of such mutual understanding itself be a cause of action and required to be tried.
- III. Taking to paragraph 11 of the plaint, Mr. Alam, learned counsel submits that the plaintiffs also took a specific stand that on the basis of such mutual understanding they have not claimed any partition of the property. It is also stated that there is a hope that the family property will be divided only after the life time of Late Labanya Das for keeping herself in family peace till her life time inasmuch as it is a pleaded case that mutual understanding to allow the Late Labanya Das to continue to be the owner of the property till her life time and accordingly, the plaintiffs has raised the issue after her death.

Therefore, it cannot be said that there is no cause of action. The learned trial Court at the stage of rejection of a plaint cannot decide the merit of such assertion and same is to be decided on the basis of evidence that can be laid by the parties in the suit and from the pleading as discussed above, makes out sufficient cause of action for trial of the suit.

- IV. Coming to the paragraph 14 of the plaint, Mr. Alam, learned counsel specifically alleged that there is fraud in execution of gift deed. Once such statement is made whether fraud is there or not is a subject matter of the trial.
- V. It is also argued by Mr. Alam, learned counsel that it is specifically pleaded that the property gifted to Late Labanya Das by Late Dhiren Chandra Das was in fact purchased in the name of Late Labanya Das by Late Dhiren Chandra Das by spending his own money. Therefore, a specific case for trial is made out by virtue of such pleading.
- VI. Mr. Alam, learned counsel further contends that a further plea has been made that there was a mutual family settlement inasmuch as such mutual family settlement can also be oral and not required to be registered. Whether such mutual arrangement is acceptable in the eyes of law or not is a subject matter of the trial and on the basis of such pleading, cause of action has been made out and therefore, the learned trial Court has not rightly rejected the plaint.
- VII. The claim raised by the plaintiffs is regarding their entitlement to the properties acquired by their father Late Dhiren Chandra Das. Such

claim cannot be dismissed at threshold only on the ground that the plaintiffs are step sons and daughter of the donee who herself acquired the property from the late father of the plaintiffs. Therefore, it is not a case that the plaintiffs have claimed their share in the property by virtue of being steps sons of Late Labanya Das rather they are claiming their share on the basis of inheritance from Late Dhiren Chandra Das inasmuch as it is their specific claim that the properties were gifted after having mutual understanding that after death of Labanya Das, the property will be shared. Therefore, one of the causes of action arose when the Labanya Das expired and the property was not shared in terms of mutual settlement.

VIII. In support of such contention, Mr. Alam, learned counsel relied on various decisions of the Hon'ble Apex Court i.e. (i) ***Saleem Bhai and Ors –Vs- State of Maharashtra*** reported in ***2003 1 SCC 557 Para-9*** (ii) ***Sopan Sukhdeo Sable & Ors –Vs- Assistant Charity Commissioner & ors*** reported in ***2004 3 SCC 137 Para-10 and 20*** , (iii) ***Abdul Gafur & Anr –Vs- State of Uttarkhand & Ors*** reported in ***2008 10 SCC 97 para 16*** and (iv) ***Mayar (H.K.) Ltd. & Ors –Vs- Owners & Parties*** reported in ***2006 3 SCC 100***.

10. From the judgments relied on by the learned counsels from both the sides, the following principle of law relating to rejection of a plaint, can be culled out:-

I. The purpose of conferment of power under Order VII Rule 11 of the CPC, 1908, to reject a plaint is to ensure that a litigant is not allowed to proceed with litigation which is meaningless and bound to

be proved as abortive. Such suits are not permitted to waste time of Court and exercise the mind of defendant. Such remedy is necessary to put an end the shame litigations.

- II. A plaint, which does not disclose a cause of action cannot proceed further.
- III. A plaint which does not disclose a clear right to sue, it is liable for rejection.
- IV. The relevant facts which need to be looked into for deciding an application under Order VII Rule 11 of the CPC, 1908, are the averments in the plaint. The pleas taken by defendant in the written statement would be wholly irrelevant at the stage of consideration of an application under Order VII Rule 11 of the CPC, 1908.
- V. A cause of action refers to a bundle of facts, which it is necessary for the plaintiff to prove in order to support his right.
- VI. When a plaint read as a whole, does not disclose material facts to give rise to cause of action, a plaint is liable to be rejected under Order VII Rule 11 of the CPC, 1908. For the said purpose, the averments disclosing cause of action and the reliefs sought for must be considered in its entirety and Court is to consider not only the pleadings in entirety but the relief sought for.

- 11. Now coming to the present case, from the averment of the plaint, it is clear that the plaintiff has ascertained that the cause of action arose after the death of Labanya Das, the step mother of the plaintiffs. It was their

contention that the gift deed was a result of mutual understanding between the family members that during the lifetime, the Labanya Das will be regarded as the owner to avoid family dispute inasmuch as the property was bought by the father of the plaintiff and defendant, by spending his own money in the name of Labanya Das.

12. In view of such pleading, it cannot be said that the plaintiffs are claiming their right over the suit property by virtue of inheritance from Labanya Das rather their case is that the property was purchased by their father in favour of their mother and on a mutual understanding that after death of their mother, property shall be shared equally by all the sons and daughters of Sri Dhirendra Ch. Das, (the husband of Labanya Das and father of plaintiffs and defendant). Further, they also alleged that gift deed executed by Labanya Das in favour of defendant No. 1, was done in collusion with defendant No. 3 and said deed are result of false representation made before late Labanya Das. In view of such pleadings, this Court is of the considered opinion that a reading of the plaint as a whole discloses give rise to a cause of action to the plaintiffs to sue the defendants inasmuch as a cause of action is a bundle of facts, which are required to be proved for obtaining relief for the said purpose.
13. After reading of the plaint as a whole, this Court is of the view that the material facts required to be stated for showing a cause of action for the suit are available in the pleading. Therefore, as the plaint discloses some cause of action, the plaint cannot be rejected for the reason that the plaintiffs are step sons of late Labanya Das and therefore, they are not entitled to inherit the properties from late Labanya Das. The question,

whether the plaintiffs shall succeeds or not in the suit cannot be a ground for rejection of plaint when reading of the plaint discloses a cause of action.

14. According to this Court, material facts are pleaded to give rise to a cause of action in the present case inasmuch as material facts are those facts which are necessary to formulate a complete cause of action.
15. In the case in hand as discussed hereinabove, the claim of the plaintiffs is based on a alleged mutual understanding involving the entire family, including Labanya Das and an alleged agreed term that during the lifetime of Labanya Das, no dispute shall be raised and properties will be equally divided amongst the plaintiffs and defendants, however, as the said agreed term not being acted upon, the suit has been filed.
16. At the stage of considering of an application under Order VII Rule 11 of CPC, 1908, it is not be looked into whether such case is having merit or not but to see whether the bundle of facts pleaded in the plaint discloses any cause of action.
- 17.** This Court is also of the considered opinion that it cannot be said that by way of clever drafting, a forceful cause of action is made out and therefore, the argument of Mr. Mukit, learned counsel regarding the clever drafting is rejected.
- 18.** In view of the aforesaid discussion, this Court is of the view that the learned trial Court below has rightly passed the impugned order dated 25.04.2014 by rejecting the application at that stage. Such decision cannot be said to be passed either without jurisdiction, or in excess of jurisdiction or exercise of jurisdiction resulting in grave injustice to warrant the

interference of this Court in exercise of its revisional jurisdiction.

- 19.** Accordingly, the present revision petition stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant