

GAHC010043452023



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

Case No. : CRP/26/2023

ARUN SAHU
S/O LAKHI PRASAD SAHU BY OCCUPATION SMAIL TEA GROWER R/O
PAKHARIAJAN GOAN TINSUKIA P.O. AND P.S TINSUKIA DIST. TINSUKIA
ASSAM PIN 786125

VERSUS

RAJ PARNAYAK AND ORS.
S/O KUNDAN PATNAYAK 15 NO. LINE SUKANPUKHURI P.O. AND P.S
MAKUM DIST. TINSUKIA ASSAM PIN 786170

2:AMRIT PATNAYAK
S/O LT. LOBO PATNAYAK 12 NO. LINE SUKHANPUKHRI P.O.
SUKHANPUKHRI P.S. AND DIST. TINSUKIA ASSAM PIN 786146

3:NORBIN PRADHAN
S/O CHANDRA PRADHAN 12 NO. LINE SUKHANPUKHRI P.O.
SUKHANPUKHRI P.S. AND DIST. TINSUKIA ASSAM PIN 786146

4:GANESH NAYAK
S/O KOSTU NAYAK 12 NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI
P.S. AND DIST. TINSUKIA ASSAM PIN 786146

5:AKASH TANTI
S/O KRPASINDU TANTI MAKUM COLLEGE ROAD P.O. AND P.S. MAKUM
DIST. TINSUKIA ASSAM PIN 786170

6:ROHIT KOYA
S/O BHOLA KOYA 15 NO. LINE SUKHANPUKHRI P.O. AND P.S. MAKUM
DIST. TINSUKIA ASSAM PIN 786170

7:JITEN URANG

S/O LT. BIKRAM URANG S/O LT. BIKRAM URANG 12 NO. LINE
SUKHANPUKHRI P.O. SUKHANPUKHRI P.S. AND DIST. TINSUKIA ASSAM
PIN 786146

8:BISHNU TASA

S/O KALIYA TASA 14 NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI P.S.
AND DIST. TINSUKIA ASSAM PIN 786146

9:SANDEEP PATRO

S/O RUKSEN PATRO 12 NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI
P.S. AND DIST. TINSUKIA ASSAM PIN 786146

10:RATAN MAHATO

S/O BINDA MAHATO 12 NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI
P.S. AND DIST. TINSUKIA ASSAM PIN 786146

11:ANANTA TASA

S/O CHALIA TASA 12 NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI P.S.
AND DIST. TINSUKIA ASSAM PIN 786146

12:SUNIL MAHATO

S/O CHANDRA MAHATO 15 NO. LINE SUKHANPUKHRI P.O.
SUKHANPUKHRI P.S. AND DIST. TINSUKIA ASSAM PIN 786146

13:DHURUP PATRO

S/O RAJEN PATRO 12 NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI P.S.
AND DIST. TINSUKIA ASSAM PIN 786146

14:HEMNATO MAHATO

S/O RAJEN MAHATO 18NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI
P.S. AND DIST. TINSUKIA ASSAM PIN 786146

15:BIPIN NAYAK

S/O SUNIL NAYAK 12 NO. LINE SUKHANPUKHRI P.O. SUKHANPUKHRI P.S.
AND DIST. TINSUKIA ASSAM PIN 786146

16:M/S NANDLALL AND SONS TEA INDUSTRIES PVT. LTD.

REGISTERED OFFICE 40 GIRISH PARK NORTH 3 RD FLOOR KOLKATA
700006 OFFICE BISMILE P.O. CHABUA DIST. DIBRUGARH ASSAM PIN 78618

Advocate for the Petitioner : MR. A DAS

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

01.03.2023

Heard Mr. A. Das, learned counsel for the petitioner.

2. The present application is filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908, assailing an order dated 17.12.2022, passed in Misc (J) Case No. 39/2022 arising out of Title Suit No. 17/2021 by the court of learned Civil Judge, Tinsukia.
3. The said Misc. (J) Case No. 39/2022 was filed under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, praying for rejection of counter-claim filed by the defendant Nos. 1 and 2. The said petition was also filed under Order 14 Rule 2 of the Code of Civil Procedure, 1908, praying for framing of preliminary issue regarding the maintainability of the counter-claim filed by the defendant Nos. 1 and 2.
4. The basic ground for praying rejection of the plaint as well as maintainability of the counter-claim itself is discernible at paragraph 6 of the Misc. case which read as follows:-

“6. That the defendant No. 1 & 2 have filed counter claim against the plaintiff as well as against one of the co-defendant, i.e. M/s Nandlall & Sons Tea Industries Pvt. Ltd. who is arrayed as proforma defendant whereas it is the settled position of law that a counter claim against co-defendant is not maintainable”.

5. Thus, it is the claim of the petitioner that the counter claim is not maintainable and liable to be rejected as claim against co-defendant i.e. M/s Nandlall & Sons Tea Industries Pvt. Ltd has been made.
6. The background facts of the present revision petition is that the present petitioner instituted a suit being Title Suit No. 61/2014 before the learned Civil Judge, Tinsukia against the State of Assam and said M/s Nandlall & Sons Tea Industries Pvt. Ltd was arrayed as defendant No. 4 in the said suit.
7. The present respondents were not a party to the aforesaid suit. The said suit was compromised between the plaintiff and the defendant No. 4 and in terms of such compromise, in an Execution proceeding, a sale deed was executed through the Court by the defendant No. 4 in favour of the plaintiff in Title Suit No. 61/2014, who is petitioner herein.
8. Now the petitioner, alleging that the present defendant Nos. 1 and 2, tried to disturb the possession of the plaintiff, the plaintiff once again filed a suit being Title Suit No. 17/2021 before the Court of learned Civil Judge, Tinsukia along with an injunction application being Misc. (J) Case No. 37/2021, wherein, the learned Court below vide its order dated 29.05.2021 was pleased to protect the plaintiff's possession over the suit land. In the said suit, the defendant Nos. 1 and 2 had filed a counter claim. The basic claim in the counter claim is reflected at paragraph 9 of the counter claim which is quoted herein below:-

“9. That upon receiving the summon and the copy of the plaint of the present suit, the plaintiff's came to know that the defendant No. 1 (original plaintiff) – Sri Arun Sahu, prior to the filing of the present

Title Suit had already behind the back of the present plaintiffs and other original defendants had filed one suit being Title Suit No. 61/2014, whereby Sri Arun Sahu, the defendant No. 1 had impleaded State of Assam, the Deputy Commissioner, Tinsukia, the Circle Officer, Tinsukia and M/s Nandlal Sons Tea Industries Pvt. Ltd. as defendants. Ultimately behind the back of the present plaintiffs and other original defendants, the defendant No. 1 (original plaintiff) – Sri Arun Sahu was successful in getting a compromise judgment and decree in respect of the part of the suit land, even though, the suit land at that period as well as today is within the possession of the present plaintiffs”.

9. Thus, from the aforesaid it is clear that in the counter claim, one of the claim is that the present petitioner obtained the decree behind the back of other defendants.
10. From the counter claim it is seen that the claims were made against Arun Sahu and M/s Nandlal Sons Tea Industries Pvt. Ltd. Though there no specific relief has been sought for against M/s Nandlal Sons Tea Industries Pvt. Ltd, which entity is also a defendant in Title Suit No. 17/2021 filed by the present petitioner.
11. Be that as it may, the learned trial Court after hearing the parties, came to a conclusion that as the claim is against the plaintiffs and there was a necessity to file the counter claim, not only against the plaintiff but also the proforma defendant. The learned trial Court further came to the conclusion that the defendant No. 1 is the dominus litis and the presence of proforma defendant is necessary in deciding their claims and therefore, there is no bar in filing counter claim against co-defendant along with the plaintiff.

12. Mr. Das, learned counsel for the petitioner assails the aforesaid order on the ground that the co-defendant cannot be made a defendant in a counter claim and no relief can be sought from such counter claim.
13. This Court do not have any disagreement with such submission of Mr. Das, learned counsel for the petitioner, however, arraying a co-defendant in the main suit in the counter claim will not wipe out the claim against the plaintiff by the defendant made in the counter claim and same will not lead to a situation that the counter claim itself shall lack cause of action to reject the same under Order 7 Rule 11, of the CPC.
14. It is also seen that co-defendant i.e. M/s Nandlall & Sons Tea Industries Pvt. Ltd, has not preferred the present petition rather this revision petition is filed by the plaintiff. It is also not the claim of the plaintiff as is discernible from the Misc. case that counter claim is not maintainable against the plaintiff.
15. For the aforesaid reason, this Court finds no merit in this present petition and accordingly, same is dismissed. However, it is made clear that this Court has not held that the claim against co-defendant in a counter claim filed by the other defendant shall be maintainable. Same is to be decided during the trial of such counter claim.
16. Though Mr. Das, learned counsel for the petitioner has also argued that there was a claim for framing of preliminary issue as to the maintainability of the counter claim. However, the learned trial Court has not dealt with such pleading. This Court is of the view that as the Misc. Case has been filed by joining multiple causes of action and prayer, therefore, the learned

trial Court cannot be faulted with in not deciding the issue.

17. Without making any observation on the merit of such claim, a liberty is granted to the plaintiff to raise such issue afresh by filing appropriate application and if such application is filed, the learned trial Court can decide in terms of settled proposition of law and fact of the present case. Dismissal of the present revision petition and upholding the impugned order dated 17.12.2022, passed in Misc (J) Case No. 39/2022 arising out of Title Suit No. 17/2021 by the court of learned Civil Judge, Tinsukia, shall have no bearing on deciding the issue of maintainability afresh.
18. With the above observation, this revision petition stands dismissed.

JUDGE

Comparing Assistant