

GAHC010172692022



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

**Case No. : CRP/97/2022**

AZIZUL HAQUE  
SON OF RAHMAT ULLAH,  
A RESIDENT OF VILL- BHATIPARA,  
P.O. AND P.S. GOALPARA,  
DISTRICT- GOALPARA, ASSAM.  
PIN- 783101.

VERSUS

SHAJABEEN AHMED AND ANR.  
WIFE OF IKHTIAR UDDIN AHMED,  
RESIDENT OF VILL- NAYAPARA,  
WARD NO. 10, GOALPARA TOWN,  
P.O. AND P.S. GOALPARA,  
DISTRICT- GOALPARA, ASSAM.  
PIN- 783101.

2:SMTI. NILU SAH  
D/O- LATE GHARU CHAH

WIFE OF LATE APURBA ADHIKARY

RESIDENT OF VILL- NARSING BARI

P.O. AND P.S. GOALPARA

DISTRICT- GOALPARA  
ASSAM.  
PIN- 783101

**Advocate for the Petitioner : MR. S SARMA**

Advocate for the Respondent :

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

**ORDER**

**Date : 28.2.2023**

Heard Mr. S. Sarma, learned Senior counsel assisted by Mr. T. K.Bhuyan, learned counsel for the petitioner. None appears for the respondents though notice has duly been served upon them.

2. The present petition has been filed assailing the order dated 1.8.2022 passed in Misc(J) case No. 20/2022 in Title Suit No. 20/2021. The background facts leading to filing of the present case are as follows:

- I. The petitioner as plaintiff filed a suit being Title Suit No. 16/2020 before the learned Civil Judge, Goalpara against the respondent No. 2 for specific performance of a contract for sale in respect of Schedule land appended to the plaint. The said suit was decreed by the learned trial court by judgment and decree dated 7.1.2021. The decree was duly executed by registration of a sale deed being Deed No. 604/565 dated 20.4.2021.
- II. The respondent No. 2 also accepted the money which is reflected in the order dated 22.4.2021, passed by the learned Executing Court. The same reflects that the respondent No.2 appeared and prayed before the learned Executing Court to allow her to withdraw the amount deposited by the decree holder and after due identification

by the learned counsel for the judgment debtor, the amount was handed over to the judgment debtor.

- III. Thereafter another suit was filed relating to the same plot of land by respondent No. 1 for specific performance for another contract which was purportedly executed by the respondent No.2 in favour of respondent No.1. The said suit was registered as Title Suit No. 20/2021, wherein the present petitioner has been arrayed as defendant No.1 and surprisingly the person against whom a specific performance of contract is sought for, is made a proforma defendant.
  - IV. Be that as it may, the present petitioner appeared in the Title Suit No. 20/2021 and filed an application under Order 7 Rule 11(a) and (b) read with Section 11 as well as Section 151 of CPC, 1908 for rejection of the plaint. The said petition was registered as Misc. Case No. 20/2022.
  - V. The respondent plaintiff filed objection in the aforesaid Misc. Case. After hearing the parties, the learned court below by way of the impugned order dated 1.8.2022 passed in the said Misc Case No.20/2022 dismissed the Misc. Case on the ground that since an issue regarding res judicata has already been framed, therefore the court was of the opinion that the Misc. Case is devoid of any merit and accordingly, it was dismissed.
3. The respondent No. 2 also appeared in the suit and filed written statement containing three paragraphs and at paragraph 2, she took a specific stand that she had no knowledge about Title Suit 16/2020 nor she

had any knowledge about the Execution Case No. 01/2021, though in the order dated 22.4.2021 passed in Title Execution Case No. 01/2021, it is reflected that the judgment debtor has filed a petition for withdrawal of money and after she being duly identified by the learned Advocate, she was handed over the amount so deposited.

4. By now it is well settled that the object of order 7 Rule 11 is to reject the plaint that are frivolous, vexatious and improper nature at the very beginning and such rejection saves the judicial time and resource.
5. This court can very well rely on the judgment of the Hon'ble Apex Court in ***Ajhar Hussain Vs Rajiv Gandhi*** reported in ***1986 Supp. SCC 315*** wherein the Hon'ble Apex court had held that the main motive of Order 7 Rule 11 is to ascertain that litigation barely having any meaning or is abortive is not permitted to occupy the time of the courts. Such view is also reflected in the case of ***Dahiben Vs Arbindbhai Kalyanjee Bhanusali*** reported in ***(2020) 7 SCC 366***. In ***Dahiben*** (supra), the Hon'ble Apex Court further held that such remedies are necessary for putting to an end the shame litigation to save judicial time. In the case of ***K. Akbar Ali Vs Umar Khan*** reported in ***AIR 2021 SC***, the Hon'ble Apex Court observed that the provision stated in Order 7 Rule 11 as ground rules for rejecting a plaint are not exhaustive in nature. Further the Court has an inherent power to reject a plaint in a case where it is of a frivolous or vexatious nature. The Hon'ble Apex Court in the case of ***T. Arivandandam Vs T. V. Satyapal and another*** reported in ***(1977) 4 SCC 467*** held at paragraph 5 as under:

***“.....The learned Munsif must remember that if on a meaningful – not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not***

***disclosing a clear right to sue he should exercise his power under Order VII, Rule 11, C.P.C taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage . The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:***

***It is dangerous to be too good"***

6. In view of the settled proposition of law, now let this court examine the order impugned in the present petition and the pleadings made in the suit as well in the written statement.
7. The pleadings at paragraphs 2,3 and 4 in Title Suit No. 20/2021, clearly shows that the plaintiff is aware regarding the existence of judgment and execution thereof and the written statement filed by the proforma defendant reflects that she is not aware of any decree passed against her nor she is aware of execution and order dated 22.4.2021 discloses that the Proforma defendant No.2 herself appeared in the execution case and prayed for withdrawal of the money deposited in compliance of judgment and decree passed in Title Suit No. 16/2020.
8. Be that as it may, in the aforesaid background and in the settled proposition of law, the learned court below ought to have considered the Misc. Application on merit instead, the learned court below has not even entertained such application on the ground that already issue has been framed inasmuch as it is the bounden duty of the court when an

application under Order 7 Rule 11 is filed it should be decided on merit.

9. The court may find favour to the application or may dismiss it. However, it should be decided on merit, on the basis of the pleading made in the said application and objection made thereto. However the learned court below has failed to exercise its jurisdiction by not entertaining such application rather dismissing the same on the ground that the issue has already been framed.
10. At this stage, Mr. Sarma, learned Senior counsel by producing a certified copy of order dated 3.9.2022 submits that issues were framed on 3.9.2022 and impugned order is dated 1.8.2022 and therefore according to Mr. Sarma the findings of the learned Court below that issues have already been framed is also erroneous.
11. Be that as it may, this court for the reasons discussed herein above, is of the considered opinion that the impugned order is liable to be interfered with and accordingly the same is done. The matter is remanded back to the learned Trial court below to decide the Misc.Case No. 20/2022 arising out of Title Suit No. 20/2021 after hearing the parties afresh and a reasoned order be passed therein.

With the aforesaid observations this revision stands allowed.

**JUDGE**

**Comparing Assistant**