

GAHC010181792022



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

Case No. : CRP(IO)/219/2022

SMT. RITA CHALIHA AND 2 ORS.
W/O LATE AJIT CHALIHA, R/O OLD DC BUNGALOW, PUB CHOWKIDINGEE
PART, P.O., P.S. AND DIST-DIBRUGARH, PIN-786001, ASSAM

2: SIDDHARTHA CHALIHA
S/O LATE AJIT CHALIHA
R/O OLD DC BUNGALOW
PUB CHOWKIDINGEE PART
P.O.
P.S. AND DIST-DIBRUGARH
PIN-786001
ASSAM

3: SMTI RADHIKA CHALIHA
D/O LATE AJIT CHALIHA
R/O OLD DC BUNGALOW
PUB CHOWKIDINGEE PART
P.O.
P.S. AND DIST-DIBRUGARH
PIN-786001
ASSA

VERSUS

SMTI. INDIRA DAVE AND 4 ORS.
W/O SHRI PRAVIN DAVE, R/O 86, FIRST CROSS, 5TH MAIN, DOMIUR
SECOND STAGE, BENGALURU, PIN-560071, KARNATAKA

2:SMTI KALYANI HAZARIKA
W/O SHRI ROMENDRA NATH HAZARIKA
R/O HOUSE NO. 34
BASISTHAPUR LANE NO. 2
BELTOLA
GUWAHATI

PIN-781028
DIST-KAMRUP(M)
ASSAM

3:SMTI BHABANI NEOG
W/O LATE AMIYO KUMAR NEOG
R/O HOUSE NO. 9
RAJBARI PATH
GANESHGURI
GUWAHATI
PIN-781005
DISPUR
DIST-KAMRUP(M)
ASSAM

4:SMTI GEETA CHOWDHARY
W/O LATE MUKUL CHOWDHARY
R/O 2D
HIRAPRAVA APARTMENTS
H.C. ROAD
UZANBAZAR
GUWAHATI
PIN-781001
DIST-KAMRUP(M)
ASSAM

5:SMTI MANJUSHREE KAPOOR
W/O DR. TARA SHANKER KAPOOR
R/O 25
RATHORE NAGAR
AMRAPALI MARG
QUEENS ROAD
JAIPUR-302021
RAJASTHA

Advocate for the Petitioner : MR. B GOGOI

Advocate for the Respondent : MR. A I Ali

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioners	: Mr. R. Borpujari, Advocate.
For the respondents	: Mr. B.D. Deka, Advocate.
Date of hearing	: 13.10.2023.

Date of judgment : 19.10.2023.

JUDGMENT AND ORDER

Heard Mr. R. Borpujari, learned counsel for the petitioners. Also heard Mr. B.D. Deka, learned counsel for the respondents.

2) To assail the order dated 26.07.2022, passed by the learned Civil Judge (Senior Division), Sivasagar in T.S. No. 7/2021, thereby dismissing the petition filed under Order VII, Rule 11 CPC for rejection of plaint, the present application has been filed under Article 227 of the Constitution of India.

3) The petitioners are the defendants in the suit, which has been instituted by the respondents.

4) The case of the respondents in the plaint is that they are daughters of Late Guru Prasad Chaliha, who had a brother and during their lifetime, they had both acquired several properties. Their father had died intestate leaving behind certain properties, which are referred to in the plaint. It is claimed that from the joint estate of the two brothers, certain more properties were also purchased. It is claimed that even after the death of their father, the business of Banamalle Tea Estate was carried out as a Hindu Undivided Family and that the properties are still a joint property, which was later on converted into a partnership firm on 26.02.1971. It is claimed that later on though the business of the said tea estate was carried out by a company registered under the Companies Act, 1956 under the name of Banamalle Tea Estate Pvt. Ltd., but essentially it still remained a partnership venture. It is projected that 50% shares were allotted to the family of their father and 50% share were allotted to the family of the brother of their father. It However, after the death of the

brother of their father, the joint properties were partitioned and it is claimed that 6 (six) immovable properties fell into the share of the petitioners and that as per annual return submitted by the said Company, there were 5 (five) shareholders. Claiming that the respondents were now given their lawful share in the property, the said suit was filed, wherein prayer has been made (a) for declaration of their rights over (i) property described in Schedule-B, (ii) business of Banamalle Tea Estate, and (iii) shares of Banamalle Tea Estate; (b) preliminary decree for ascertaining the shares of the parties in the Schedule-B property; (c) decree of partition; (d) decree for rendition of accounts; (e) decree for permanent injunction; (f) for a decree of mandatory injunction; (g) for cost of the suit.

5) The petitioners had filed their written statement, denying the claim of the respondents.

6) Moreover, the petitioners had also filed a petition for rejection of plaint, against which the respondents had filed written objection. The learned Trial Court, after discussing the submissions and case laws cited before, it was of the opinion that the conclusion as to rejection of the plaint must be drawn from the averments made in the plaint and thus, held that the plaint cannot be rejected unless it is frivolous, vexatious and improper and that the plaint cannot be rejected on the grounds state in the petition. Resultantly, the said petition was rejected.

7) The learned counsel for the petitioners has meticulously referred to the plaint and has made his submissions by submitting that the purported claim for share in the estate of the father of the respondents was hopelessly barred by limitation and that their claim of rendition of accounts demonstrates that the respondents have assumed that the suit property is a partnership

property and therefore, without prayer for dissolution of partnership, the suit for rendition of accounts is not maintainable. In support of his submissions that a mere clever drafting would not permit plaintiff to make suit maintainable which otherwise would not be maintainable and/or barred by law, he has relied on the following cases, viz., *T. Arivanandandam v. T.V. Satyapal*, (1977) 4 SCC 467, and *Sree Surya Developers and Promoters v. N. Sailesh Prasad*, (2022) 5 SCC 736..

8) It has been submitted that some of the suit properties are situated outside the territorial jurisdiction of the Court of Civil Judge (Senior Division) Sivasagar and therefore, the suit would not be maintainable in the present form and the said learned Court would not be vested with jurisdiction to assume jurisdiction over land which is not within its territorial jurisdiction. In this regard, reliance was placed on the provision of Section 16 CPC.

9) The contentions of the learned counsel for the petitioners has been denied by the learned counsel for the respondents and in respect of issue of territorial jurisdiction of the Court at Sivasagar, it was submitted that Section 17 CPC was an exception to the provisions of Section 16 CPC and in a suit for partition, the Court where one of the suit property is located would have jurisdiction to adjudicate the suit for partition.

10) Perused the materials available on record and also carefully considered the erudite submissions made by the learned counsel for both sides.

11) First, the issue of territorial jurisdiction is taken up. In this regard, the provisions of Section 16 and 17 CPC are quoted below:-

16. Suits to be instituted where subject-matter situate.- Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or

charge upon immovable property,

(d) or the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section "property" means property situate in India.

17. Suits for immovable property situate within jurisdiction of different Courts.— *Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:*

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

12) Therefore, it appears from the said two provisions that in a suit for partition, where the land is situated within territorial jurisdiction of one Court and/or when the entire or contiguous land-holding is situated partly in jurisdiction of one Court and partly in the territorial jurisdiction of another Court, then the provision of Section 16 CPC is applicable and when the land holding is distinct and separate, then the provision of Section 17 CPC would apply. The said opinion of the Court is found to have support from the ratio of the decision of the Supreme Court of India in the case of *Shivanarayan (Dead) by LRs. V. Maniklal (Dead) by LRs.*, (2020) 11 SCC 629, cited by the learned counsel for the respondents. Therefore, the plaint, containing prayer for partition cannot be

rejected on the said ground alone.

13) The next point that the suit for rendition of accounts cannot be maintainable unless prayer for dissolution of partnership is made is found to have force. However, the said point requires adjudication, being mixed question of facts and law and cannot be decided summarily under Order VII, Rule 11 (a) and (d) of the CPC.

14) As regards the third point urged by the learned counsel for the petitioners, it is seen that under the circumstances as narrated in the plaint, the question of the relief being barred by limitation is also a mixed question of facts and law and cannot be decided summarily under Order VII, Rule 11 (a) and (d) of the CPC. It cannot be summarily decided that the possession of the suit land by the petitioners was adverse to the interest of the respondents. In the case of *Bhagwant F. Sulakhe v. Digambar Gopal Sulakhe & Ors.*, (1986), 1 SCC 366, cited by the learned counsel for the respondents, under the circumstances narrated there, it is possible to take a view that despite severance of the joint family status may not be sufficient to deprive the joint family of such property. Therefore, this does not appear to be a good ground to reject the plaint.

15) Moreover, even if we accept the submissions of the learned counsel for the petitioners that a part of the relief cannot be allowed by the learned Trial Court, the same is not a ground to reject the plaint as the Court would have the jurisdiction to strike out pleadings, which appears to be an appropriate mode of dealing with those statements and prayers made in the plaint which can otherwise be struck off in accordance with law.

16) Therefore, the Court is of the considered opinion that the impugned order dated 26.07.2022, passed by the learned Civil Judge (Senior

Division), Sivasagar in T.S. No. 7/2021 does not suffer from jurisdictional error or perversity and therefore, this challenge fails and this application stands dismissed.

17) The parties are left to bear their own cost.

18) The parties, who are represented herein by their learned counsel, are directed to appear before the learned Civil Judge (Senior Division), Sivasagar on 06.11.2023 in connection with T.S. No. 7/2021 without any notice for appearance, and by producing the certified copy of this order, await further instructions from the said learned Court.

JUDGE

Comparing Assistant