

GAHC010184532021



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

Case No. : CRP/73/2021

RUMA PAUL CHOWDHURY AND 2 ORS
W/O LT. JAGADISH PAUL CHOWDHURY, R/O MARGHERITA PAUL PARA
DIST- TINSUKIA, P.O. MARGHERITA, PIN-786181

2: JAYEETA PAUL CHOWDHURY
D/O LT. JAGADISH PAUL CHOWDHURY
R/O MARGHERITA PAUL PARA DIST- TINSUKIA
P.O. MARGHERITA
PIN-786181

3: ABHISHEK PAUL CHOWDHURY
S/O LT. JAGADISH PAUL CHOWDHURY
R/O MARGHERITA PAUL PARA DIST- TINSUKIA
P.O. MARGHERITA
PIN-78618

VERSUS

JHANTU PAUL
S/O LT. JITEN CHANDRA PAUL, R/O MARGHERITA CHARALI, P.O. AND P.S
MARGHERITA, DIST. TINSUKIA, ASSAM

Advocate for the Petitioner : R SARMAH

Advocate for the Respondent : FOR CAVEATOR

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. A Das, Advocate

For the Respondent : Mr. B C Das, Senior Advocate
Mr. AR Shome, Advocate

Date of Hearing : 15.05.2023

Date of Judgement : 15.05.2023

JUDGEMENT & ORDER (ORAL)

Heard Mr. A Das, learned counsel for the petitioners. Also heard Mr. B C Das, learned Senior counsel assisted by Mr. AR Shome, learned counsel for the respondent.

2. The present revision petition is filed against a judgment dated 23.02.2021 passed in TA No. 02/2019.
3. **The background fact of the present revision petition can be summarized as follows:**
 - I. The respondent as plaintiff instituted TS No. 30/2014 before the learned court of Civil Judge, Tinsukia against the predecessor-in-interest of the present petitioners praying for a decree of declaration that the plaintiff has joint right, title and interest over the suit premises, for recovery of khas possession of the suit premises and for recovery of rent etc.
 - II. Though summon of the said suit was served upon the predecessor-in-interest of the present petitioners/ defendant, the said defendant did not appear and the suit proceeded ex-

parte against the predecessor-in-interest of the petitioners.

- III. It is an admitted position that the predecessor-in-interest was a tenant under the predecessor-in-interest of the plaintiff/ respondent.
- IV. The said suit was dismissed by the learned trial court on the ground that suit was bad for non-joinder of necessary party inasmuch as other legal heirs of the original landlord are not made parties to the suit and the plaintiff / respondent alone filed the suit which involves the prayer of declaration that he is a joint owner of the suit premises.
- V. Being aggrieved, the plaintiff preferred an appeal before the learned appellate court i.e. learned Additional District Judge No. 2 (FTC), Tinsukia.
- VI. The learned appellate court reversed the judgment of the learned trial court considering the evidence of the plaintiff that the plaintiff/ appellant though sought for declaration, eviction and arrears of rent later on the appellant in his evidence did not claim declaration.
- VII. The learned appellate court also came to a conclusion that the suit was essentially landlord tenant suit and landlord could terminate tenancy and institute suit for eviction and in such a suit the tenant is estopped from the questioning the title of the landlord as per Section 116 of the Indian Evidence Act, 1872.
- VIII. It was also a conclusion of the learned appellate court that in a suit between landlord and tenant the title of the property is

irrelevant so for question of the eviction of the tenant is concerned.

IX. Thereafter, considering the evidence the learned appellate court came to a conclusion that defendants were defaulter and suit had was bonafidely required by the plaintiff and decreed the suit by reversing the judgment but also decreed the suit. Being aggrieved, the present application is filed.

4. Mr. Das, learned counsel defending the decision of the learned trial court and assailing the judgment of the learned appellate court submits that when the plaintiff himself has filed the suit for declaration of right, title and interest, the other co-sharer has become necessary party and in their absence a suit for declaration of right, title and interest cannot be decided. Accordingly, Mr. Das submits that the learned trial court has committed serious illegality in reversing the judgment. In support of such contention, Mr. Das relies on a judgment of this court in the case of ***Motoi Mia and Others vs Abdul Haque and Others*** reported in ***1984 0 AIR (Gau) 77***.
5. Per contra, Mr. B.C. Das, learned Senior counsel submits that the learned appellate court has not committed any error of law or fact inasmuch as the plaintiff in his evidence has not asserted any claim of right, title and interest. The learned Senior counsel further contends that the learned appellate court has rightly held that in a suit for landlord and tenant the declaratory part is irrelevant inasmuch as such declaration has not also been decreed by the learned appellate court. Therefore, Mr. Das submits that this revision

petition is liable to be dismissed.

6. Considered the argument advanced by the learned counsel for the parties. Perusal of the plaint, itself shows that though a prayer for declaration of right, title and interest is made, however, no dispute is discernible from the pleading of the plaintiff that his title is clouded by any action of his co-sharer and nothing has been pleaded to that effect. A pleading of the suit clearly shows that it is a suit for eviction of the tenants. There is no dispute that defendants are tenants over the suit premises and the mother of the plaintiff was the landlord.
7. At paragraph 1 of the plaint, it was pleaded that the mother of the plaintiff was the lawful owner of the suit premises and after death of the mother of the plaintiff, a fresh tenancy was created between the plaintiff and defendant in respect of the suit premises and plaintiff claims joint ownership with other legal heir of the original landlord.
8. Law is also well settled that a co-sharer can file a suit without making other co-sharer parties where the interest of such co-sharer are not affected by any prayer made in the suit or in the event any decree is passed. Therefore, in the present suit where the petitioners were tenants and admittedly their predecessor-in-interest did not contest the suit after receipt of the notice, they cannot be allowed to agitate the question of non joinder of co-sharers as parties to the suit. The judgment relied on by Mr. Das was passed in a background fact that suit was filed for partition amongst co-sharers and some of the co-sharers were not made parties and accordingly, this court held that those co-sharers are necessary

parties. The fact in the present case is totally different to that of the aforesaid judgment inasmuch as in the aforesaid judgment decree could not have been passed partitioning a suit property without the other co-sharers and such partition will affect the right of the co-sharers. But in the present case, even if those legal heirs of the original landlord are not made parties the eviction of the tenant will not make any difference as to their right, title and interest of the other co-sharer more particularly in a given fact of the present case that no such decree was also passed by the learned appellate court.

9. Accordingly, this court is of the view that this revision petition lacks merit and same stands dismissed. Parties to bear their own costs.
10. As no other ground has been urged by the petitioners in assailing the order of the appellate court, this court has confined itself to the point urged.

JUDGE

Comparing Assistant