

GAHC010224552022



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

Case No. : CRP/128/2022

NARAYAN BHATTACHARJEE AND ANR.
S/O. LT. SAMARENDRA BHATTACHARJEE, R/O. DIPHU, SITALABARI, PWD
MAIN ROAD (FRONT SIDE) OF RAJESH PHARMACY, WARD NO. 01, P.O.
DIPHU, P.S. DIPHU, DIST. KARBI ANGLONG (EAST) ASSAM, PIN-782460.

2: HARADHAN BHATTACHARJEE
S/O. LT. SAMARENDRA BHATTACHARJEE
R/O. DIPHU
SITALABARI
PWD MAIN ROAD (FRONT SIDE) OF RAJESH PHARMACY
WARD NO. 01
P.O. DIPHU
P.S. DIPHU
DIST. KARBI ANGLONG (EAST) ASSAM
PIN-782460

VERSUS

KAJAL BHATTACHARJEE
S/O. LT. SAMARENDRA BHATTACHARJEE, R/O. DIPHU, SITALABARI, PWD
MAIN ROAD (FRONT SIDE) OF RAJESH PHARMACY, WARD NO. 01, P.O.
DIPHU, P.S. DIPHU, DIST. KARBI ANGLONG (EAST) ASSAM, PIN-782460.

Advocate for the Petitioner : MR. D C C PHUKAN

Advocate for the Respondent : MR P C DEY

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

06.04.2023

Heard Mr. D. C. Phukan, learned counsel for the petitioners. Also heard Mr. P. C. Dey, learned counsel for the respondent.

2. The present revision petition is filed praying for setting aside and quashing the order dated 26.08.2022 passed by the learned Munsiff, Karbi Anglong, Diphu in petition No. 292/2021 filed under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 whereby the aforesaid petition was dismissed.

3. The background facts of the present case are as follows:-

I. The plaintiff/respondent claiming to be legal heirs of one Late Samarendra Bhattacharjee, sought for the partition of land belonging to said Samarendra Bhattacharjee. The suit was registered as T.S. No. 03/2021.

II. According to the plaintiff/respondent, the plaintiff and defendant/petitioner Nos. 1 and 2 are the sons of deceased Samarendra Bhattacharjee. It is also claim of the plaintiff that the some other sons of said Samarendra Bhattacharjee in the meantime expired either issueless or unmarried.

III. Accordingly it is also pleaded in the plaint that the property should be partitioned and two grand sons of said Samarendra Bhattacharjee are also entitled for such properties.

4. In view of the aforesaid pleaded facts, the defendant/petitioner Nos. 1 and

2 filed the petition No. 292/2021 for rejection of the plaint on the ground that the plaintiff has filed the suit for partition of the properties of the deceased legal heirs of Samarendra Bhattacharjee, and has not claimed partition on his behalf but on behalf of two grandsons of said Samarendra Bhattacharjee.

5. The plaintiff filed objection raising that such application is not at all maintainable inasmuch as there are cause of action in the case.

6. After hearing the parties, the learned trial Court below dismissed the aforesaid petition on the following ground:-

I. That plaint reveals that cause of action arose on 10.07.2020 and 26.07.2020, when the plaintiff sent a legal notice for a meeting to be held between the parties. Therefore, this is a cause of action.

II. The suit property is valued sufficiently and stamped also.

III. The plaintiff and defendants are the sons of Samarendra Bhattacharjee which is an admitted fact and therefore, as a son of Samarendra Bhattacharjee, plaintiff can sue and file a suit for partition of property left by his father.

7. Being aggrieved the present application is filed.

8. Mr. Phukan, learned counsel for the petitioners submits the following:-

I. The plaintiff had filed the suit for partition of the properties of the defendant Nos. 1 and 2 who are alive, therefore, the plaintiff has no locus standi to file a partition suit.

II. Though the defendant Nos. 1 and 2 are arrayed as party, however, the grand-daughter of Samarendra Bhattacharjee is not made a party who is also entitled for property, therefore, the said suit is liable to be rejected.

III. The suit is filed for partition of the suit property belonging to the other legal heirs of Samarendra Bhattacharjee, and not for the property possessed by the plaintiff.

IV. On whose behalf the suit for partition is filed, they are not parties to the suit i.e. the other grandsons of late Samarendra Bhattacharjee.

V. The plaint is liable to be rejected in terms of Clause "d" of Rule 11 of Order 7 of the CPC, 1908.

9. Per contra, Mr. Dey, learned counsel for the respondent submits that the learned trial Court below has rightly passed the order inasmuch as the issue whether other legal heirs of Samarendra Bhattacharjee, are necessary parties or not are a matter of trial and a plaint cannot be rejected on the basis of such facts.

Mr. Dey, learned counsel further contends that there is no dispute that property which has been possessed by the plaintiff and defendant Nos. 1 and 2 are properties that they have inherited from their deceased father and therefore, seeking a partition after death of some of the legal heirs of deceased Samarendra Bhattacharjee, it cannot be said that suit is not maintainable at the hands of the plaintiff.

10. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties and also perused the material

available on record.

11. The provision of Order 7 Rule 11 of the Code of Civil Procedure, 1908, empowers the Court to reject a plaint subject to the fulfillment of the conditions as enumerated under the said clause "a" to "f" of the Rule 11.
12. It is by now well settled that object of incorporation of such provision to reject a plaint is to wipe out frivolous, vexatious and improper plaint at the very outset and thus saving judicial time and resource.
13. As Mr. Phukan, learned counsel for the petitioners urged that there basic ground for seeking a rejection of plaint is Clause "d" of Rule 11 of Order 7 of the CPC, 1908, let this Court deal with the same.
14. Clause, "d" of the Rule 11 of Order 7 of the CPC, 1908 provides that where the claim in a plaint is barred by law and same is disclosed from the pleading of the plaint itself, a Court can reject the plaint.
15. In the case in hand, this Court do not find any pleading which shows that the suit/plaint was barred under any provision of law, though the pleading has been made that it is barred under the Partition Act, 1893. The Partition Act, 1893 is an Act which relates to power of the Court to order sale instead of division in partition suit and procedure when sharers undertakes to buy and provisions relating to partition suit by transferee of share in dwelling houses. Therefore, it cannot be said that there is any statement which leads to a conclusion that the plaint is barred under any law.
16. Mr. Phukan, learned counsel for the petitioners has emphasized that the

pleading made in the paragraph 15 clearly shows that suit has been filed for partition of properties of the two grandsons of the original owner of the land and therefore, from the said pleading, it is clear that plaintiff is having no locus standi to file the suit. However, Mr. Phukan, has failed to show this Court under what provision of law, the plaintiff is not entitled to file the suit for partition being legal heirs of Samarendra Bhattacharjee.

17. From the pleadings, it is seen that the property sought to be partitioned admittedly belongs to one Samarendra Bhattacharjee and plaintiff and defendant Nos. 1 and 2 are sons of said Samarendra Bhattacharjee. From the pleadings, it is also clear that said Samarendra Bhattacharjee left behind daughter and others sons one of whom died unmarried and other left some legal heirs. When, admittedly partition of the properties relates to the predecessor-in-interest of the plaintiff and defendants, their shall not be any bar for filing a suit by one of the legal heirs of the property owner making others parties in the suit for partition of the properties belonging to their predecessor-in-interest. Therefore, from the paragraph 15 also, this Court do not find anything to conclude that the suit was barred by any law. Further, learned trial Court below has elaborately discussed the pleadings and the arguments of the counsels and came to the conclusion as discussed hereinabove.
18. A suit cannot be rejected under provision of Order 7 Rule 11 of the CPC for non joinder of necessary parties and such issue can be determined during the trial itself.
19. In that view of the matter, this Court in exercise of its power under Article 227 of the Constitution of India is not inclined to interfere with such

decision inasmuch as this Court finds no jurisdictional error or failure of justice in passing the impugned order by the learned trial Court.

20. Accordingly, the present revision petition stands dismissed.

21. Interim order if any stands vacated.

JUDGE

Comparing Assistant