

IN THE COURT OF MANIPUR

AT IMPHAL

CRP (CRP Art. 227) No. 23 of 2022

1. Shri Naorem Birendra Singh, aged about 65 years S/O late N. Dwijamani Singh of Luker, PO:- Langjing and PS: Patsoi, District: Imphal West, Manipur, PIN - 795113.

2. Shri Wangkheimayum Somorendro Singh aged about 46 years S/O Late W. haoba Singh of Wangkhei Lourebam Leikai, PO and PS: Porompat, District: Imphal East, Manipur. PIN 795005.

... Petitioners/Defendants

-Versus-

1. Shri Khumukcham Ahanjao Singh aged about 66 years S/o Th. Tombi Singh of Awangkhumou Mayai Leikai, PO:- Langjing and PS: Patsoi, District: Imphal West, Manipur, PIN -795113..

2. Shri Naorem Pishak Singh, aged about 62 years S/O late N. Dwijamani Singh of Luker, PO:- Langjing and PS: Patsoi, District: Imphal West, Manipur, PIN - 795113.

....Respondents/Plaintiffs

BEFORE

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners : Mr. N. Suresh, Advocate

For the Respondents : Mr. M. Nabakishore, Mr. S. Jhalajit, Advocates

Date of Hearing : 13-05-2024/16-12-2024

Date of Order : 27-12-2024

JUDGEMENT & ORDER [CAV]

1. This Revision petition under Art. 227 is filed against the order dated 01-03-2022 passed in Judl Misc Case No. 37 of 2021 of the Ld. Civil Judge Senior Division, Imphal West, Manipur whereby the application for amendment filed by the Respondents/Plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short, CPC) was allowed.

2. The fact of the present Revision Petition is:-

(I) The Original Suit being No. 91 of 2016 before the Ld. Civil Judge Senior Division, Imphal West, Manipur was instituted by the respondents/plaintiffs against the petitioners/defendants on 5th August, 2016 inter-alia praying for declaration as owner of the suit land, cancellation of the sale deed of the suit land and for entitlement of compensation for acquisition of the suit land for development of railway lines. An amendment petition filed earlier prior to the present application was also allowed. The recast plaint was also filed on 18 August, 2019. Issues were framed on 10-09-2019. The plaintiffs also filed Examination -in Chief of the PW. No. 1 on 21st October, 2019.

(II) The respondents/plaintiffs filed an application being Judl. Misc Case No. 37 of 2021 on 04- 02-2022 for amendment of the plaint under order VI Rule 17 C.P.C. for recovery of the compensation award of the acquisition of the suit land during the pendency of the suit land without their knowledge.

(III) The present petitioners/defendants who are Ops/respondents in the said Judl. Misc Case No. 37 of 2021 have filed their Written objection

on 18th February, 2022 stating that the proposed amendment will change the nature of the suit and heard the matter on the same day.

3. It is stated that vide the impugned order dated 01-04-2022 in the Judl. Misc Case No. 37 of 2021, the amendment was allowed after commencement of trial thereby changing the true character of the suit.

4. In another Judl. Misc Case No. 292 of 2020, the present Respondents/ Plaintiffs prayed to recover the amount mentioned in the amendment portion. The Ld. Trial Court decided the case on 19th January, 2021 as " It is also seen that the question of compensation and others under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 does not lies under the jurisdiction of this Court. In any case, ample measures to ensure the recovery of amount awarded as compensation if the suit is declared in his favour and he is declared as the owner of the suit land."

5. The petitioners/defendants, being aggrieved by the impugned order dated 01/03/ 2022 passed in the J.M. Case No. 37 of 2021 Ref :- O.S. 91 of 2016, beg to prefer this revision Petition under Article 227 on the following grounds among others:-

GROUND

A. for that the Original Suit No. 91 of 2016 before the Ld. Civil Judge Senior Division, Imphal West is a Declaratory Suit under Section 34 of the Specific Relief Act, 1963 with consequence relief of Suit Value at Rs. 21,000/- (Rupees Twenty- one Thousand) only.

Whereas, the allowed amendment which to be inserting as Para 17 (IV) is that "a decree for recovery a sum of Rs. 19,06,896.70p (Rupees

nineteen lakh six thousand eight hundred ninety six and paise seventy) only from defendant No. 1 and a sum of Rs.29,06,896.70 p from defendant No. 2 which was withdrawn by them respectively as Compensation amount of the suit land."

That, the recovery suit is governed by Section 7 of Specific Relief Act which a different character of the suit. Thus, the present amendment has changed the character of the suit.

B. for that the recovery of money, the suit value should be same as the recoverable amount under Section 7(i) of the Court Fees Act, 1870. In the said suit, the suit value is only Rs. 21, 000/-, which become undervalue with the amendment. The Ld. Trial Court adopted such illegality.

C. for that the amendment portion in the impugned order is an act after filing of the suit and not a controversy between the parties and need not to be determine in the suit.

D. for that the amendment portion allowed in the impugned order is against the order dated 19th January, 2021 passed in Judl. Misc Case No. 292 of 2020 Ref : Original Suit No 91 of 2016 of the same referred Original Suit of the impugned order. The Plaintiffs are not declared as owner of the suit land till date.

E. For that the Ld. Trial Court passed an erroneous and inconsistent order that is very contrary with the order dated 19th January, 2021 in Judl Misc Case No. 292/2020 of the same Suit.

F. for that there is no grounds that the Plaintiffs could not have raised the amendment matter before the commencement of Trial.

6. Hence this petition to set aside/quash the impugned order in respect of Judl Misc Case No. 37 of 2021 and an interim order for staying the operation of impugned order dated 01/ 03/2022 passed in Judl Misc Case No. 37 of 2021.

7. While issuing notice vide order dated 27-05-2022, this Court stayed further proceedings of OS No. 91 of 2016 before the court of learned Civil Judge, Senior Division, Imphal West as there no consideration of the proviso to Order VI Rule 17 CPC in the impugned order. Relevant portion reads as follows:

"Perusal of the order under revision reflects that the trial court allowed the amendment of the plaint, ignoring the fact that the trial in the suit had commenced as long back as in October 2019, No reference was made to the proviso to Order VI Rule 17 CPC by the trial court . Validity of the said order therefore requires deeper examination. There shall accordingly be stay of all further proceedings in O.S. No. 91 of 2016 on the file of the learned Civil Judge (Senior Division), Imphal West, pending further orders".

8. Written objection was filed by the respondents/plaintiffs stating that the respondents No. 1,2,3,4 and 5 are the Legal heirs of Respondent No. 1 Late Khumukcham Ahanjao Singh who died 02/06/2022 during the pendency of the present Revision Petition of the above referred CRP (CRP Art. 227) 23 of 2022 and the Respondent No. 2 are the Respondent/ petitioner No. 2 in the above referred Revision Case.

9. It is submitted that the respondents/plaintiffs denied the allegation that the amendment allowed in the Judl. Misc Case No. 37 of 2021 after the commencement of trial has changed the character of the suit.

10. The respondents/plaintiffs have submitted that there is a pending suit for title of the suit land and accordingly the respondent/plaintiffs filed the said Judl. Misc case for hold in/held up/ to seized the bank account of the Petitioner No. 1 & 2 which was wrongly withdraw the compensation amount during the

pendency of suit for title suit of the said agricultural land and now involved the subject matter of the case but the Hon'ble Court ample measure to ensure the recovery of amount awarded as compensation if the suit is decreed in his (Respondent No. 1) favour and he is declared as the owner of the suit land.

11. It is submitted that, the suit i.e. O.S 91 of 2016 of Civil Judge Senior Division Imphal West filed by the respondents/plaintiffs is also suit for a decree declaring that the compensation amount of the suit land is entitled to the plaintiff No.1 (Respondent No. 1 in the present case) as well as the plaintiff No. 2 (Respondent no. 2 in the present Case) who are the possessors of the suit land. Whereas the Respondents filed their suit in the year 2016, the concerned authority i.e. Land Collector Imphal West released the compensation amount of the suit land but during pandemic of covid-19 period in the year 2020, the petitioners and some official staffs of the Land Collector in collusion with and withdrew the said compensation amount with the strength of a false/ fraud compromise decree in O.S. No. 83 of 2016 without any right, title or authority of the suit land, even though there is pending suit as O.S No. 91 of 2016 the title Suit of the suit land. The petitioners/defendants were also contested the said suit by filing their written statement. They have full knowledge of the case. So, it is very much necessary to amend the plaint of the respondents/plaintiffs for the end of justice. There is no change in the character of the suit.

12. Mr. N. Suresh, learned counsel for the petitioners/defendants submits that by the impugned order allowing amendment in the prayer portion, a new cause has been introduced. It is urged that the relief for recovery of the compensation award was not pleaded earlier and such a prayer cannot be introduced when the suit is at the stage of examination of plaintiffs' witnesses. It is also pointed out that the valuation of the suit was for only Rs.21,000/- and court fee for this

amount only was paid by the plaintiffs and with the introduction of new prayer, the valuation of suit has exceeded a sum of rupees nineteen lakhs and hence the suit become undervalued. It is further pleaded that the impugned order is against the order dated 19-01-2021 passed by the trial Court in Judl. Misc. Case No. 292 of 2020 filed by the plaintiffs, where they would have ample opportunity to recover the compensation amount, if they have been declared as owner of the suit land. Learned counsel for the petitioners refers to the decision in the case of **LIC v. Sanjeev Builders (P) Ltd., (2022) 16 SCC 1**: where Hon'ble Supreme Court observed that amendment of pleading shall be allowed liberally, but time barred relief cannot be introduced by way of amendment.

"18. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really subserve the ultimate cause of justice and avoid further litigation."

It is prayed that the impugned order dated 01-03-2022 passed by learned Civil Judge, Senior Division, Imphal West in Judl. Misc. Case No. 37 of 2021 be set aside.

13. Per contra, Mr. M. Nabakishore, learned counsel for the respondents/ plaintiffs draws the attention of this Court to the prayer portion in the plaint where the plaintiffs have claimed a relief to the effect that they are entitled to the land compensation award of the suit land at para 17(iii) of the plaint. It is clarified that at the time of the filing of the suit, the amount of award could not be ascertained and the petitioners/defendants withdrew the amount during the pendency of the suit without the knowledge of the petitioners. It is highlighted

that the amendment is sought to bring on record the subsequent development and if the same is not allowed the plaintiffs will suffer immensely. It is also clarified that the proposed amendment does not fall within the vice of the proviso to Order VI Rule 17 CPC. Learned counsel relies a decision of this Court in the case of **Shri Paokholam Kipgen v. Thangjangam Kipgen [Order dated 24-11-2015 in CRP(CRP ART. 227) No. 17 of 2013]** holding that amendment can be allowed if the same does not change the nature and character of the suit. It is further explained that the deficient court fees, if any, can be directed to be paid later on. It is prayed that the present petition under Article 227 of the Constitution of India be dismissed being devoid of any merit.

14. For ready reference prayer in O.S No. 91/2016 and purpose Amendment of prayer as made in Judl Misc Case No. 37 of 2021 are reproduced below :

Main prayer in O.S No. 91/2016

17. That, the suit is valued at Rs. 21,000/- for the purpose of jurisdiction and Ad-valorem Court fee of Rs. 1238.25 is paid here with under section 7 (iv) (c) of the Court Fees Act. 1870 as extended to the state of Manipur. That the plaintiff therefore claims :

(i) a decree declaring that the plaintiff was the owner of the suit land under Patta No. 76/18/5. 76/56 (old)/ 421/580 (New) covered by C.S. Dag No. 34/414/469, measuring an area of .62 acre situated at 76-Salam Keikhu and the plaintiff No. 2 is the possessor of the suit land which was acquired by the State Government secretariat: Revenue Department vide Notification No. 4/15/LA/2014-Com (Rev) at S.No. 36 of 76-Salam Keikhu Village Sheet No. 1 dated 8th September, 2015 for the construction of New B.G Railway line between Tupul to Imphal Section of Jiribam - Imphal Project Phase - I.

(ii) A decree declaring that the Regd. sale deed bearing Regn. No. 2122, dated 12/6/2014 in the Office of the Sub-Registrar, (HQ) Imphal,

Manipur executed by defendant No. 1 in favour of the defendant No. 2 is illegal and not binding on the plaintiffs and hence cancelled;

(iii) a decree declaring that the compensation amount of the suit land is entitled to the plaintiff No. 1, as well as the plaintiff No. 2 who is the possessor of the suit land.

(iv) to issue a perpetual injunction restraining the defendant No. 1 and the defendant No. 2 and their men and privies from withdrawal of compensation amount of the suit land with an ex- parte temporary injunction of the same matter while pending of the suit;

(v) a decree of such other reliefs as this Hon'ble Court deems fit and proper from time to time.

"Purpose Amendment" in Judl. Misc. Case No. 37/2021

"That During the pendency of the suit the defendant No.1 and the defendant No.2 without any right, title and/or authority and also without any order/orders of the Hon'ble Court if any for withdrawal of the compensation amount of Rs. 48,13,794.40p. of the said agricultural land mentioned above (suit land in the present case) was withdrawn by concealing the real fact of the case through their bank account being account No. 0484011103890 of UBI Paona Bazar, Imphal of Naorem Birendra Singh Defendant No.1 of Rs. 19,06,896.70p and bank account being Account No. 909010039192340 of Axis Bank Thangal Bazar, Imphal of W. Somendro Singh (Defendant No.2) of Rs. 29,06,896.70 p. total a sum of Rs. 48,13, 794.40p. by and an order dated 19th September, 2020 of the collector Land Acquisition, Imphal West, Manipur."

The Hon'ble Court be pleased further to allow the relief claim(VI) in para No.17 by inserting as para No 17 (VI) that "a decree for recovery a sum of Rs. 19,06,896.70 p. (Rupees nineteen lakh six thousand eight hundred ninety six and paise seventy) only from defendant No.1 and a sum of Rs. 29,06,896.70 p from defendant No.2 which was withdrawn by them respectively as compensation amount of the suit land."

15. This Court considers the materials on record, the submissions made at bar and the relevant law in this regard. The short question involved in the present case is whether the impugned order allowing new prayer for recovery of compensation award withdrawn by the defendants during the pendency of the suit would change the nature and character of the suit.

16. From a bare reading of the plaint specially the prayer portion at para 17, it is seen that the plaintiffs have made a relief at para 17(iii) for a decree declaring them entitle to the compensation amount of the suit land under their possession. At the time of the filing of the suit, the amount was not ascertained nor did the defendants withdraw the same. It is an admitted fact that the compensation award was withdrawn by the defendants during the pendency of the present suit without the knowledge of the plaintiffs on the basis of a compromise decree between the defendants, in which the plaintiffs were not impleaded. In such circumstances and due to the subsequent event of withdrawal of the award, the plaintiffs filed the amendment application for introduction of the new relief for recovery of compensation amount from the defendants. Otherwise, the plaintiffs will not have any opportunity of recovering the said amount.

17. This Court is of the view that the proposed amendment will not be covered by the proviso to Order VI Rule 17 CPC, as the relief prayed for by way of amendment for recovery of compensation amount from the defendants was not in existence at the time of filing of the suit. Hence, the plaintiffs could not have raised this relief at the time of filing of the suit.

18. On close scrutiny of the proposed amendment of prayer for recovery of compensation amount and the main prayer for declaration to entitlement of compensation to the plaintiffs for the acquisition of suit land under their

possession, there is no doubt that the nature of the suit will not be changed drastically. Rather, it is an ancillary relief to the main relief at para 17(iii) of the plaint.

19. In view of the settled position of law that amendment can be allowed under Order VI Rule 17 CPC for doing complete justice, if the same does not change the nature of the suit, this Court is of the opinion that there is no error in the impugned order. Accordingly, the petition under Article 227 of the Constitution of India is dismissed. Interim order dated 27-05-2022 passed by this Court staying the proceedings of OS No. 91 of 2016 pending before the court of learned Civil Judge, Senior Division, Imphal West is vacated. The suit may be proceeded expeditiously without affecting other pending cases. No cost.

20. Send a copy of this order to the court of learned Civil Judge, Senior Division, Imphal West for information and proceeding as per law.

JUDGE

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