

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP. No. 15 of 2023

Date of Decision: 23.02.2024

Smti. Sikha Naug

Vs.

Meghalaya Hindu Mission

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.

For the Respondent(s) : Mr. S.D. Upadhaya, Adv.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT

1. An order dated 15.06.2023 passed by the learned Assistant to the Deputy Commissioner, Shillong in Misc Case No. 79(T) 2021 is under challenge herein by the petitioner who has approached this Court with this application under Article 227 of the Constitution of India read with Rule 36A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937.

2. The background of the case is that the respondent herein had instituted a civil suit being T.S. No. 15(T) of 2008, subsequently renumbered as T.S. No. 110(T) of 2013 in the court of the learned Assistant to the Deputy Commissioner, Shillong. The suit was filed apparently on the ground that the petitioner/defendant had encroached upon the property of the respondent/plaintiff. The petitioner/defendant has then filed the written statement and the case is at the evidence stage with three witnesses already examined as plaintiff's witnesses.

3. It is the contention of the petitioner/defendant that the plaint did not disclose any cause of action and it is therefore liable to be rejected by the learned trial court. Accordingly, the petitioner filed an application under Order 7 Rule 11(a) of the Code of Civil Procedure with a prayer for rejection of the plaint. The same was registered as Misc. Case No. 79(T) of 2021.

4. The learned trial court upon hearing the parties, vide the impugned order dated 15.06.2023 had disposed of the said application by rejecting the prayer made therein. Hence this revision petition.

5. Mr. S. Jindal learned counsel for the petitioner in his submission has taken up the issue of maintainability of this petition since this issue was raised by the learned counsel for the respondent as a preliminary objection.

6. In this regard, the learned counsel has pointed out that the impugned order was passed in an application under Order 7 Rule 11(a) of the Code of Civil Procedure which is not an order appealable under

Order 43 CPC. Therefore, the only remedy for the petitioner is to prefer a revision under Article 227 of the Constitution.

7. It is also submitted that under Article 227, the High Court exercises the power of superintendence over the lower courts and in view of the findings of the learned Lower Court at para 29 of the impugned order that the petitioner had encroached over the land of the respondent, such finding touching upon the merits of the suit being the main relief sought for by the respondent, the same ought not to have been done so by the learned Lower Court in a miscellaneous proceeding. This, therefore, is an action without jurisdiction which can only be corrected under Article 227.

8. Yet again, it is submitted that the recourse to Rule 36A of the 1937 Rules, wherein it can be seen that the said rule is in two parts, the first part dealing with the revisional power of the High Court and the Deputy Commissioner, the second part deals with the appellate powers. Both these parts are mutually exclusive and depending on the circumstances of a case, either of these two jurisdictions, that is, revision or appeal can be invoked. In the present case, as has been indicated above, since it is clear that the learned Lower Court has overstepped its jurisdiction by deciding the entire suit in a miscellaneous application, revisional power of this Court can be resorted to.

9. The learned counsel has then led this Court to the provision of Order 6 Rule 2(1) of the Code of Civil Procedure to say that under this provision what is required to be set out in a plaint is that the pleadings therein must state material facts. However, in the petition before the

learned trial court, the plaint filed by the respondent/plaintiff did not contain any material facts against the petitioner/defendant herein.

10. The learned counsel has further submitted that a perusal of the plaint in question would show that at para 5 of the same, reference has been made to Patta No. 18 of 2003 issued by the Syiem of Myllem covering the property of the respondent for an area of 1,63,306 sq. ft. However, the respondent at para 6 had admitted that “...*some more land was ceded by the plaintiff in between which were not property taken into consideration...*”. Again, it is the admission of the respondent that an area of 2000 sq. ft. was utilized in “*Straightening the boundaries with neighbours in the Southern side of the Mission Compound*”. Since the land of the petitioner is also on the said southern side, this according to the learned counsel can be assumed that some portion of the land has been ceded to the petitioner and as such, there is no question of any encroachment upon the property of the respondent by the petitioner, more so, in absence of any verifiable details.

11. It is also the claim of the respondent that out of the total area of 1,63,306 sq. ft., after taking into account the land ceded by the respondent, including straightening of the boundaries with neighbours in the southern side of the Mission Compound, the total area left should have been 1,56,511 sq. ft. After the respondent had allegedly engaged a private surveyor to survey the land, it is said that the total area found was 1,47,416 sq. ft. more or less. The short fall in the area was attributed to illegal possession by some of the respondent’s neighbours, particularly on the southern side of the property and the area found occupied by the

petitioner/defendant is said to be one of such trespassers. This, according to the learned counsel for the petitioner is a vague assertion which reflected uncertainty on the part of the respondent and an action in a court of law cannot be based on such ambiguous and vague contentions which are founded on nothing a presumptions and conjectures, material facts not having been stated in the plaint.

12. On what is meant by material facts, the learned counsel has referred to the case of Udhav Singh v. Madhav Rao Scindia reported in (1977) 1 SCC 511, paras 41 and 42. Another judgment cited in this regard is the case of D.M. Deshpande & Ors. v. Janardhan Kashinath Kadam (Dead) By LRS & Ors., (1998) 8 SCC 315, paras 8 and 10.

13. The petitioner on the basis of whatever has been stated or not stated in the plaint finding that no cause of action has at any point of time arisen against the petitioner, the appropriate application under Order 7 Rule 11(a) CPC was preferred before the learned trial court.

14. However, the learned trial court had rejected the petition vide impugned order dated 15.06.2023 wherein it was opined that cause of action exist in the plaint based on the averments made at paras 5 and 6 of the said plaint which clearly indicated that the area of the property belongs to the respondent/plaintiff. To this, the learned counsel has submitted that there is no clear indication of the areas of the property of the respondent/plaintiff and the language employed in these paragraphs like '*should*' and '*could*' only goes to show that the claim or assertion of the respondent as far as the area of the suit property is vague. No cause of action has therefore arisen.

15. The learned counsel went on to submit that what is more damaging is the fact that at paras 28 and 29 of the impugned order the learned trial court, when the issue of encroachment is still pending final adjudication in the suit the unqualified and unambiguous reference to “...paragraph 7 of the plaint clearly indicates the encroachment.” and “The encroachment by the defendant in the suit property...” has amounted to prejudging of the issue, when in effect the learned trial court had already concluded that the petitioner herein had indeed committed encroachment into the property of the respondent. This is nothing but an action committed in excess of jurisdiction which requires immediate corrective interference by this Hon’ble Court, if nothing else, the said last line of para 28 and the entire para 29 of the impugned order ought to be expunged.

16. The learned counsel has submitted that for the reasons abovementioned the impugned order was passed without any basis and is accordingly liable to be dismissed which is prayed so herein.

17. Finally, the learned counsel has submitted that the following authorities may be considered by this Court while deciding this matter.

- i. Manish Kumar Mishra v. Union of India & Ors., 2020 SCC Online All 535, para 57;
- ii. Canara Bank v. P. Selathal & Ors., (2020) 13 SCC 143, paras 9.1, 9.2, 9.4 and 9.5;
- iii. Church of North India v. Lavajibhai Ratanjibhai & Ors., (2005) 10 SCC 760, para 39; and

- iv. Shri H.D. Vashishta v. Glaxo Laboratories (I)(P)Ltd.,
(1978) 1 SCC 170, para 1.

18. Per contra, Mr. S.D. Upadhaya, learned counsel for the respondent raising the preliminary objection on the maintainability of this petition herein has submitted that by preferring a revision petition before this Court under Article 227 of the Constitution read with Rule 36A of the Rules of Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 against the impugned order, the same is not maintainable inasmuch as under the said rules an alternative remedy for filing an appeal or revision lies before the court of the Deputy Commissioner.

19. In this regard, the learned counsel has submitted that under sub-para 1 of Rule 36-A, it is provided that “...*The Deputy Commissioner shall be a Court of appeal from a decision of an Assistant...*”. In the case of Nandita Das & Anr. v. Patrisha Simpli reported in (2014) 1 MJ 1, paras 8 and 9, this Court had confirmed and reiterated the aforesaid provision. Therefore, this petition is not maintainable in its present form and the same is liable to be dismissed, further submits the learned counsel.

20. As to the challenge that no cause of action was disclosed in the plaint filed by the respondent/plaintiff before the learned trial court, the learned counsel has submitted that the learned trial court taking into account the plaint as a whole and more particularly the averments made at paras 3, 4, 5, 6, 7, 8, 9, 10, 11 and 15 had come to the conclusion that the cause of action and material facts were stated in the plaint and in

course of passing the impugned order relevant authorities have been cited, for instance, the case of A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Sale, (1989) 2 SCC 163, para 12 and also the case of Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706, para 13.

21. The learned counsel has further submitted that there are also other authorities which would support the decision taken in the impugned order as far as the issue of cause of action or rather as far as the provision of Order 7 Rule 11(a) CPC is concerned. In this regard, the case of G. Nagaraj & Anr. v. B.P. Mruthunjayanna & Ors., 2023 SCC Online SC 1270, paras 4, 5, 6, 7, 8, 9 and 10; Mayar (H.K.) Ltd. & Ors. v. Owners and Parties, Vessel M.V. Fortune Express & Ors., (2006) 3 SCC 100, para 12; Bhau Ram v. Janak Singh & Ors., (2012) 8 SCC 701, para 15; and also the case of Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512, paras 146, 151 and 152 have been cited.

22. In view of the authorities cited above, the learned counsel has submitted that this petition is devoid of merits and the same is liable to be dismissed which is prayed so herein.

23. This Court having considered the respective contention and submission of the parties, even before taking up the issue of maintainability of this instant petition, what is understood is that the challenge of the petitioner is directed to the said impugned order dated 15.06.2023, the subject matter of the rejection of an application filed by the petitioner/defendant under Order 7 Rule 11 of the Code of Civil

Procedure seeking for rejection of the plaint therein on the ground that there was no disclosure of any cause of action on institution of the said suit.

24. For the sake of brevity, it would therefore be convenient for this Court to look into the issue of whether any cause of action exists which has compelled the respondent/plaintiff to institute the said Title Suit.

25. Again, as has been submitted by the learned counsel for the petitioner, a perusal of the plaint and the annexures thereto is required to be examined as to whether any material facts or material particulars are present therein.

26. The provision of Order 6 Rule 2(1) has been referred to which is reproduced herein as follows: -

“ORDER 6

2. Pleading to state material facts and not evidence.—(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.”

27. In the case of Udhav Singh(supra) cited by the petitioner at paras 41 and 42 of the same the Hon’ble Supreme Court has observed as follows: -

“41. Like the Code of Civil Procedure, this section also envisages a distinction between “material facts” and “material particulars”. Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different

consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16 of the Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

42. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1) (a)."

28. It is the contention of the petitioner that there ought to be details to back up the allegation made in the plaint to constitute cause of action. However, in the plaint there was only a vague and bare plea of encroachment with absolutely no details and particulars given of the alleged encroachment.

29. The key word to be noted here is ‘*vague plea*’ whereupon hinges the objection of the petitioner/defendant. Instances found in the plaint like the reference to the total boundary of the land of the respondent

which initially stood at 1,63,306 sq. ft. but which in course of time due to ceding of some part of the land to other parties including loss of land of about 2000 sq. ft. in the process of straightening of the boundaries with neighbours, particularly in the southern side of the Mission Compound adjacent to the land of the petitioner herein which process should have cost some loss of land of the respondent and on calculation, the total of which should have come to 1,56,551 sq. ft. but instead, on the land being surveyed, the total area measured only about 1,47,416 sq. ft. which have raised a presumption on the part of the respondent/plaintiff that some portion of the land have been illegally possessed and encroached upon by some of the respondent's neighbours, particularly in the southern side of the boundary, have been cited to emphasize such contention.

30. Again, on a perusal of the plaint in Title Suit No. 15(T) of 2008 at paras 7, 8 and 9 what is understood is that the respondent/plaintiff has alleged that the petitioner along with her deceased husband had started erection of a pakka type structure/house within the boundary of the land of the respondent/plaintiff for which an FIR was filed before the Lumdiengjri Police Station. The Syiem of Myllem who was arrayed as defendant No. 3 in the said suit and who is the traditional authority to issue patta had also, on a complaint by the respondent, issued letter dated 07.12.2004 to the petitioner and her deceased husband under the subject heading of '*Encroachment of Mission Land*' with further request to stop any construction work in the said land property.

31. The above, as pointed out, would only lead to the conclusion that

there are some elements of factual situation cited by the respondent/plaintiff and the allegation of an illegal construction within the boundary of the land of the respondent have been made out. Therefore, in the opinion of this Court, cause of action do exists to enable the respondent/petitioner to institute the suit with the reliefs sought for. In this regard, as to the meaning of cause of action, the case cited by the petitioner, that is, Manish Kumar Mishra(supra) is found relevant wherein at para 57 the following is found:

“57. The judicially settled meaning which the expression "cause of action" has acquired, has been summarised in Mulla's Code of Civil Procedure¹⁷, in the following words:-

"In the restricted sense, 'cause of action', means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises 'cause of action'. It has to be left to be determined in each individual case as to where the cause of action arises. The cause of action means the circumstances forming infraction of the right or immediate occasion for action. It is left to be determined in each individual case as to where the cause of action arises. The cause of action in suit/petition has no reference to the defence taken in the suit nor is it related to the evidence by which the cause of action is established.

A suit is always based on a cause of action. There can be no suit without a cause of action and such cause of action having accrued to the plaintiff, the jurisdiction of the court in a matter of contract will depend on the situs of the

contract and the cause of action arising through connecting factors. A cause of action is a bundle of facts which taken with the law applicable, gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of an act no cause of action can possibly accrue. It is not limited to actual infringement of right sued on, but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action; but it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. 'A cause of action' means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour. In legal parlance the expression 'cause of action' is generally understood to mean a situation or a state of facts that entitle a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person."

32. Having established the fact that material facts and material particulars have been cited in the suit instituted by the respondent/plaintiff, the findings of the learned trial court in the impugned order in this regard cannot be faulted.

33. However, this Court would agree with the submission of the learned counsel for the petitioner that the observations made at paras 28 and 29 of the impugned order wherein is found the observations or even findings of the learned trial court that there has been encroachment upon the suit property by the petitioner/defendant, has substance inasmuch as

in a miscellaneous application and that too, not in the main case, observation of such kind has indeed conveyed the impression that the defendant is already guilty of encroachment even without evidence being led and appreciated in such respect.

34. Accordingly, while declining to interfere with the impugned order, the observations made at paras 28 and 29 of the same as far as reference to the assertion that there has been encroachment upon the suit property by the defendant/petitioner herein, such observations are hereby expunged from the said impugned order.

35. As to the issue of maintainability of this petition, in view of the observations and findings made above, the same is not necessary to be discussed.

36. The authorities cited by the respective parties have been perused by this Court and only what are relevant and necessary for the determination of the matter in hand have been taken into account.

37. To the extent indicated above, this petition is accordingly disposed of. No costs.

Judge

Meghalaya
23.02.2024
"Tiprilynti-PS"