

GAHC040001062019



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

CRP No./18 (AP)/2019

Shri Tadar Tarung and anr.

...Petitioners

-Versus-

Shri Kripa Chachok (PI) and others

... Respondents

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the Petitioners : Mr. T. Chiba

Advocates for the Respondents: Mr. K. Tama

Date of Hearing : 10.10.2023

Date of Judgment : 10.01.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. T Shiva, learned counsel for the petitioners. Also heard Mr. K. Tama, learned counsel for the respondents.

2. The petitioners Sri Tadar Tarung and Tadar Takia have filed this application under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure, 1908 (CPC for short) praying for setting aside and quashing the impugned civil proceedings of Title Suit No. 06/2018 and the two impugned orders dated 17.07.2019 passed by the learned Civil Judge (Senior Division)–cum-Chief Judicial Magistrate Ziro, Lower Subansiri district, Arunachal Pradesh. Both the petitioners are informants who have lodged the FIR dated 25.06.2017 against the accused/respondents No. 1 to 6 herein.

3. The FIR unfolds that on 24.01.2017 the present petitioners on behalf of Leyang village lodged a complaint with the ADC Nyapin against Shri Tadar Gari and Shri Tadar Tania of Panung village for settlement of land dispute of Darch-Hagam, Rayar and Langdo lands. The ADC Nyapin in accordance with the provisions of *Assam Frontier (Administration of Justice) Regulation, 1945* (AFR for short) passed an order by appointing different PIs, HGBs and GBs as Supervisors and Judges respectively. Accordingly, the Mel proceedings (local case) was held on 30.01.2017 and 15.03.2017 at ADC's office Mell hall, Nyapin, but, the appointed Supervisors and Judges were unable to settle the land dispute between the parties. Therefore, another Mel proceeding was fixed on 10.04.2017 at the ADC's office Mell hall, Nyapin. These Mel proceedings were set aside by this Court and the land dispute between the parties has been pending before this Court.

4. To their utter dismay, the Supervisors Sri Kipa Chachuk, Shri Tadar Pandit

and the judges Shri Tadar Nikpo, HGB of Gangnee village, Shri Tamey Tamar, HGB of Hiya-II village, Shri Kipa Tada, HGB of Pingchi village, Shri Kipa Nima, HGB of Chebang village and Shri Gyamar Takar, GB of Gyamar village, prepared a false report and declaration of the Mel proceeding dated 30.01.2017, 15.03.2017 and 10.04.2017 after accepting gratification from Abu Tamey.

5. The above-named PIs, GBs and HGBs who are also arrayed as respondents No. 1 to 6 herein have already cheated Sri Tadar Nyakum who was also one of the judges and he was induced to affix his signature on the false report and Mel proceeding. Tadar Nyakum is arrayed as respondent No. 7 herein. When the FIR was not registered, a complaint was lodged before the Superintendent of Police/DSP of Kurung Kumey district Koloriang, Arunachal Pradesh on 19.07.2017 but the Superintendent also ignored the complaint and the petitioners were impelled to move the Writ Petition (Criminal) No. 04/2017 in this Court with a prayer for direction to register the FIR dated 25.06.2017 against the respondents No. 1 to 6.

6. The aforementioned manipulated documents were issued by the respondents to procure a decree through a title suit being Title Suit No. 06/2018 on the strength of the false declaration and report of Mel proceeding mentioned above. The respondents also managed to destroy/lose the original records of Langdo land from the Office of the Additional Deputy Commissioner (ADC) Nyapin, Kurung Kumey district, Arunachal Pradesh. Then, a complaint vide CR Case No. 32/2018 was filed before the Magistrate's Court. The learned trial Court vide order dated 03.12.2018 (Annexure-B) directed the Nyapin police to register a criminal case against the respondents No. 1 to 7 on the basis of the allegations leveled in the FIR dated 25.06.2017.

7. Thereafter, the respondents have filed a title suit registered as Title Suit No. 06/2018 seeking declaration of the allegations leveled against them in the FIR dated 25.06.2017 lodged with the Officer-In-Charge of Nyapin Police Station as defamatory statements and the respondents claimed a consequential relief of Rs.70,00,000/- (Rupees Seventy Lacs) as damages for mental agony and slur on their reputation. The trial Court then advised the learned counsel for the petitioners to transfer the case from Koloriang Court to Kurung Kumey district in Arunachal Pradesh but the title suit being Title Suit No. 06/2018 is still pending before the present trial Court and the present petitioners were not aware about the proceedings of the title suit .

8. On learning about the title suit being Title Suit No. 06/2018 the learned counsel for the petitioners appeared before the Court and prayed for some time but a very short time was accorded to present petitioners to file written statement/reply in the title suit being Title Suit No. 06/2018.

9. It is contended that the title suit being Title Suit No. 06/2018 is not maintainable on the following grounds:

(a) That the FIR dated 25.06.2017 is still under investigation at Nyapin Police Station.

(b) A writ petition is also pending against the FIR being WP(Crl.)/04/2017.

(c) A case arising out of the same cause of action is still pending in the Magistrate's Court being CR Case No. 32/2018.

(d) At this juncture it cannot be declared that the accusation against the respondents are defamatory in nature and have tarnished the image of the respondents.

(e) The respondents have filed the title suit being Title Suit No. 06/2018 with the ulterior motive to frustrate the investigation based upon the FIR

dated 25.06.2017 and CR Case No. 32/2018 and the trial Court has not even struck out the respondent No. 7 who is not a necessary party in the title suit as no allegation against the respondent No. 7 has been leveled in the abovementioned FIR.

10. It is further submitted that the petitioners have filed preliminary objection relating the maintainability and tenability of title suit on 17.07.2019. The preliminary objection was heard and dismissed vide impugned order dated 17.07.2019 on the ground that there is no provision/law for raising preliminary objection against the title suit/civil suit.

11. It is averred that the learned trial Court has observed that the preliminary objection could be raised through written statement and not otherwise, and the petitioners were directed to file written statement within two weeks, failing which the Court would proceed ex-parte order on 30.08.2019. The date 30.08.2019 was also fixed for framing of issues. No statutory period of time for challenging the impugned order dated 17.07.2019 was accorded to the petitioners by the trial Court. It was erroneously held by the learned trial Court that the written statement was not filed within ninety days. It was also erroneously observed by the learned trial Court that the petitioners had failed to refer the provisions for preliminary objection despite the fact that Section 21 of the CPC was referred to, by the petitioners.

12. When a suit or a proceeding is not maintainable, the petitioners have every right to raise preliminary objection as per Section 21 of the CPC and filing of a written statement is not necessary. As the alleged defamatory statement is under investigation, the petitioners cannot be compelled to divulge the investigation by filing written statement. The petitioners have prayed to set

aside the two orders dated 17.07.2019 and the proceeding of the title suit being Title Suit No. 06/2018 as the orders and the proceedings are illegal and arbitrary and are liable to be set aside.

13. The respondents have filed an affidavit-in-opposition. The respondent No. 1 was authorized by the other respondents to file the affidavit-in-opposition.

14. *Per contra* it is contended that the issue of preliminary objection in a civil suit has to be filed under the provisions of Order XIV Rule 2(2) of the CPC and therefore, unless a written statement is filed by way of defence, on the issues as embodied under Clauses (a) and (b) of Rule 2(2) of Order XIV of CPC, the raising of preliminary issue is barred. Thus, the order dated 17.07.2019 has been judiciously passed by the learned Civil Judge (Senior Division), Ziro, who has held that:-

“It is seen that the issue of maintainability of the suit has been raised by the defendant by filing preliminary objection. The TS No. 06/2018 was fixed for filing of WS but instead of that preliminary objection has been raised. In my considered opinion, the issue of maintainability can be conveniently raised through written statement which has not been filed even after lapse of 90 days. Further, the Ld. Counsel for the defendant has failed to refer any provision under which the preliminary objection has been filed. It appears that the preliminary objection instead of WS has resorted to only frustrate and delay the proceedings in Title Suit. Misc Case No. 27/2019 is accordingly dismissed.”

15. It is averred that, the language of Rule 2 (2) of Order XIV CPC, after the amendment of 1977 is discretionary in nature and as such, if the petitioners had filed written statement, the trial Court had the discretion to decide whether to frame preliminary issue to be decided first. It is further contended that that the provisions under which the preliminary objection was filed by the petitioners has

been misconstrued and misconceived.

16. The revision petitioners have invoked Section 21 of the CPC before the trial Court as well as before this Court in (paragraphs 6 and 7 of the revision petition), which is not at all connected with the facts as narrated in Misc Case No. 27/2019 and T.S. No. 06/2018, and which has been reiterated in paragraph 5 of the revision petition.

17. It is further contended that after filing of that revision petition on 19.08.2019, when no interim order was passed by this Court vide order dated 21.08.2019, the learned counsel for the petitioners appeared before the learned trial Court on 30.08.2019 and agreed to file written statement in Title Suit No. 06/2018 within two weeks. Hence, this instant revision petition has become infructuous on that count alone. It is further submitted that the trial Court has not closed the right of the petitioners to raise any issue on maintainability of law.

18. The trial Court has observed that by not filing written statement on time, the petitioners are procrastinating the proceeding. It is also submitted that the Court cannot bypass the provision of Order XIV CPC by deciding the preliminary issue on fact or on law. At least the petitioners should file a written statement. It is also submitted that the petitioners are in no manner prejudiced by the impugned order of the learned trial Court.

19. The respondents have submitted that the Writ Petition (Crl.) No. 04/2017 is not pending but it was dismissed by this Court vide order dated 19.08.2019. The respondents were not privy to the order dated 03.12.2018 passed by the learned Chief Judicial Magistrate, Ziro. However, they have filed the title suit being Title Suit No. 06/2018 on 16.11.2018 before the learned trial Court. They

have denied that the petitioners were granted insufficient time to file written statement by the learned trial Court. The petitioners were served with the copy of the plaint and documents on 11.01.2019 but they have not filed their written statement although the case was listed on 15.03.2019, 06.05.2019, 14.06.2019 and 17.07.2019. Instead of filing their written statement, they have filed Misc. Case No. 27/2019 which was rejected by the impugned order dated 17.07.2019.

20. Assuming the grounds stated in paragraph 5 of the petition, are taken for consideration, even then it would not meet the requirement to decide the preliminary issue as contemplated under (a) and (b) of the Sub-Rule 2 of Rule 2 of Order XIV of the CPC. The petitioners have misconceived and misconstrued the law by stating that as per Section 21 CPC, the preliminary issue could have been decided.

21. It is averred that the facts afore-narrated in the Misc Case No. 27/2019 was out of purview of Section 21 of CPC and the proviso is confined to:

- (a) Object to place of suing.
- (b) Competency on pecuniary jurisdiction and
- (c) Competency of the executing Court.

Whereas the grounds and facts narrated in the Misc. Case No. 27/019 that the aforesaid title suit being Title Suit No. 06/2018 is not maintainable since the FIR dated 25.06.2017 is pending for investigation and defamatory suit will not lie for the allegations made in the FIR.

22. The respondents have prayed to dismiss the petition with costs.

23. I have given my thoughtful consideration to the submissions at the bar.

24. Section 21 of the CPC reads:

“21. Objections to jurisdiction. – 4[(1)] No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.]”

25. Order XIV Rule 2 of the CPC reads:

[2. Court to pronounce judgment on all issues. – (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to –

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.]

26. In the instant case, the two impugned orders dated 17.07.2019 in Title Suit No. 06/2018 and Misc. Case No. 27/2019 respectively, are reflected herein below:-

“The plaintiff is represented by the Id. Counsel Shri K. Tama.

The defendant is represented by the Ld. Counsel Shri T. Shiva.

The defendant was directed to file WS within two weeks from 14-06-19 as last opportunity but the defendant has not filed WS even after lapse of 90 days. Instead, a preliminary objection was filed by Misc Case No. 27/19 which has been heard and dismissed today.

In the interest of justice, the defendant is given last opportunity to file WS within two weeks failing which the suit shall proceed Ex-parte. The WS shall be filed after furnishing copy to the plaintiff.

Next date is fixed on 30.08.2019 for framing of issues."

"The miscellaneous case No. 27/19 is filed by the Id. Counsel Shri T Shiva on behalf of defendant No. 1 and 2 raising a preliminary objection regarding maintainability of TS No. 06/18.

Copy served to Ld. Counsel Shri K. Tama, Ld. Counsel for the plaintiff.

Heard both the Ld. Counsels on the issue raised in Misc Case No. 27/19.

After careful consideration and hearing the submissions of both the Counsels, the Misc Application No. 27/19, it is seen that the issue of maintainability of suit has been raised by the defendant by filing preliminary objection. The TS No. 06/18 was fixed for filing of Ws but instead of that preliminary objection has been raised. In my considered opinion, the issue of maintainability can be conveniently raised through written statement which has not been filed even after lapse of 90 days. Further, the Id. Counsel for the defendant has failed to refer any provision under which the preliminary objection has been filed. It appears that the preliminary objection instead of WS has resorted to only to frustrate and delay the proceedings in Title Suit.

The Misc Case No. 27/19 is accordingly dismissed."

27. Reverting back to this instant case, it is held that the provisions of Section 21 of CPC have been misconstrued by the petitioner. It is true that the allegedly defamatory statement against the respondent is still under investigation and the petitioners could not disclose the investigation through the written statement, but at the same time, this issue can be indeed conveniently raised at a later stage.

28. The submissions of the respondents that the issue of preliminary objection

in a civil suit has to be filed in the provisions of *Order XIV Rule 2(2) of CPC* cannot be brushed aside. It cannot be held that the impugned orders dated 17.07.2019 has been erroneously passed by the learned Civil Judge (Senior Division), Ziro, in connection with Title Suit No. 06/2018 and Misc Case No. 27/2019. It has also surfaced through the submissions of both the sides that the petitioners have agreed to file a written statement in Title Suit No. 06/2018 and they have appeared before the learned trial Court on the next date fixed i.e. on 30.08.2019.

29. At this juncture it is apparent that there are other reliefs available to the petitioners. The petitioners could raise the issue on maintainability at the time issues are framed in connection with Title Suit No. 06/2018, or the issue on maintainability can be decided finally with the disposal of the suit being Title Suit No. 06/2018. To avoid multiplicity of proceedings and for the interest of justice, I refrain from setting aside the orders impugned by the petitioners. The orders impugned cannot be held to be erroneous orders.

30. This petition is dismissed being devoid of merits.

31. No orders as to costs.

Send back the LCR.

JUDGE

Comparing Assistant