

GAHC010102602023



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

Case No. : CRP/48/2023

SRIMATI IRA BHATTA AND 2 ORS
W/O- SRI DULAL KRISHNA BHATTA, PROPRIETOR OF M/S SACHI PAPER
HOUSE, HAVING OFFICE AT BARA BAZAR, DAS MARKET, PANDU,
GUWAHATI-781012 AND WORKSHOP CUM GODOWN AT GMC HOLDING
NO. 16, WARD NO. 7 / 4 (NEW), NEAR OLD PANDU THANA, PANDU-
MALIGAON ROAD, OLD GS ROAD, PANDU, GUWAHATI-781012, KAMRUP
(M) DISTRICT, ASSAM

2: DULAL KRISHNA BHATTA
S/O- LATE CHANDRA SAGAR BHATTA
R/O- LOCO COLONY
NEAR PANDU LOKNATH MANDIR
GUWAHATI-781012
DIST. KAMRUP(M)
ASSAM

3: DEBANJAN BHATTA
S/O- SRI DULAL KRISHNA BHATTA
R/O- LOCO COLONY
NEAR PANDU LOKNATH MANDIR
GUWAHATI-781012
DIST. KAMRUP(M)
ASSA

VERSUS

GOPAL BAUL AND 2 ORS.
S/O- LATE SUNIL CHANDRA PAUL, R/O- COLLEGE GATE, PANDU,
MALIGAON, GUWAHATI-781012, P.S. JALUKBARI, DIST. KAMRUP(M),
ASSAM

2:M/S. BHATTA BROTHERS
REPRESENTED BY ITS OWNER
SRI DEBRAJ BHATTA

JOYMOTI NAGAR
PANDU
MALIGAON
GUWAHATI-781012
DIST. KAMRUP(M)
ASSAM

3:DEBRAJ BHATTA
S/O- SRI DULAL KRISHNA BHATTA
JOYMOTI NAGAR
PANDU
MALIGAON
GUWAHATI-781012
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : MR B KAUSHIK (R-1)

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

CRP/48/2023

Smt. Ira Bhatta and 2 others

..... Petitioners

-Versus-

Shri Gopal Baul and Others

..... Respondents

For the Petitioner(s) : Mr. A. Das, Advocate

For the Respondent(s) : Mr. S. Hazarika, Advocate

**::BEFORE ::
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : **17.05.2024**

Date of Judgment : **17.05.2024**

JUDGEMENT AND ORDER (ORAL)

This is an application filed under Section 115 of the Code of Civil Procedure, 1908 (for short "the Code") challenging the order dated 04.04.2023 passed in Misc. (J) case no.102/2023 arising out of T.S. No 69/2018 whereby the applications seeking rejection of the plaint by the Defendant Nos. 3, 4 & 5 was rejected by the learned trial Court.

2. The issue which is involved in the instant proceedings is as to whether the learned trial Court was justified in rejecting the application vide the impugned order dated 04.04.2023. For the purpose of deciding the same this Court finds it relevant to take note of pleadings contained in the Plaint of Title Suit No 69/2018 alongwith the documents which were filed with the Plaint.

3. The Respondent herein as plaintiff had instituted a suit. The case of the plaintiff is that he had entered into an agreement with one Debraj Bhatta who is the defendant No.2 in the suit and also the proprietor of the defendant No.1. In terms with the Agreement dated 24.10.2016, the defendant No.2 took a loan of Rs. 8 lakhs on 15.09.2016 and agreed to repay the loan amount within 8 months from 15.09.2016 i.e. within 15.05.2017. In the said agreement, amongst various clauses, Clause no.7 stipulated that if the defendant No.2 failed to repay the total loan amount to the plaintiff within the stipulated period of 8

months i.e. on or before 15.05.2017 then the defendant No.2 shall be bound by law to deliver the possession of his shop to the plaintiff. In Clauses 3 & 4 of the Agreement, it was mentioned that the defendant No.2 would mortgage his shop viz M/s Bhatta Brothers with the plaintiff and failing to pay the amount with 15.05.2017, the mortgaged shop shall be owned by the plaintiff. In Clause no.8 of the said agreement, it was also categorically mentioned that both the parties agreed that in case of violation of any of the terms and conditions by the defendant No.2, the plaintiff may initiate both civil and criminal proceedings before the appropriate Court of law and in such event the defendant No.2 shall be liable to bear the entire cost and consequences that may arise.

4. From the perusal of the plaint, it reveals that the defendant No.2 did not repay the loan of Rs.8 lakhs and under such circumstances a Deed of Agreement for Sale of Possessory Right was executed by the defendant No.2 in favour of the plaintiff, whereby the defendant No.2 transferred the possessory right of the shop namely, M/s. Bhatta Brothers which have been more specifically described in the schedule to the plaint at a total consideration of Rs.8,55,000/- upon due receipt of the entire amount. It was also mentioned that the defendant No.2 had handed over the possession of the shop to the plaintiff. In addition to that there were various other rights which were created on the basis of the said Deed of Agreement for Sale of possessory right in favour of the Plaintiff. It was stated in the Plaint that after delivering possession of the suit room to the Plaintiff, the Defendant No.2 requested the Plaintiff to give him a short time so that he can remove the paper and stationary articles from the suit room. Under such circumstances the Plaintiff did not take the lock and key of the suit room. After a week when the Plaintiff requested for the keys, the Defendant No.2 on one pretext or the other kept on buying time.

5. It was alleged in the plaint more specifically at paragraph No 8 of the plaint that the defendant No.2 had thereupon collusively hatched a conspiracy with the defendant Nos.3, 4 and 5 by creating a tenancy between the defendant Nos.2 and 3 in order to frustrate the Deed of Agreement for Sale of Possessory right dated 24.05.2017. It was mentioned that the Defendant No.3 was the mother of the Defendant No.2. It was further mentioned that the defendant No.3 had also managed to obtain a trade license bearing registration No.54/2019 dated 13.07.2017 from the Gauhati Municipal Corporation regarding her business namely, M/s Sachi Paper House. Further to that after creation of all these documents, a suit was filed being Title Suit No.227/2017 against the defendant Nos.2 as landlord by the defendant No.3 and the plaintiff was also impleaded as a defendant No.2 in the said suit wherein allegation was made that the Defendant No.3 was threatened by the Plaintiff and therefore sought for the relief that the Defendant No 3 was a lawful tenant and cannot be evicted without following due process. It was also mentioned that in the present suit the Plaintiff was the defendant No.2 in Title suit No 227/2017 and the Plaintiff filed the written statement but on account of pecuniary jurisdiction the counter claim could not be filed in the said suit for which the present suit was filed.

6. In view of the alleged fraud committed by the defendants jointly and collusively in order to deprive the plaintiff of his rights which had accrued on the basis of the Deed of Sale of possessory right of the suit room, the suit was filed seeking declaration that the plaintiff is the lawful owner of the suit shop which has been specifically described in Schedule-A and is the appropriate person to have possession of the suit property of Schedule-A for which consideration money have been duly received by the defendant No.2; declaration that the tenancy and the rent agreement by and between the defendant Nos.2 and 3 in

respect of the Schedule A property as illegal, fraudulent having no binding effect of the said tenancy upon the plaintiff; a decree for recovery of Khas possession of the Schedule-A premises in favour of the plaintiff by evicting the defendant Nos.1 to 5 from suit premises and by putting the plaintiff in actual possession of the Schedule-A premises, a decree of permanent injunction restraining the defendants from entering into the Schedule-A premises and from disturbing the plaintiff in peaceful possession of the Schedule-A premises; and alternatively it was prayed that the entire sale consideration of Rs.8,55,000/- along with compensatory interest @ 18% per annum thereto from 24.05.2017 till date of realization from defendant No.2 and actual recovery of the said amount in favour of the plaintiff by sale of all movable and immovable properties of the defendants; etc.

7. Pursuant to the filing of the suit, an application was filed under Order VII Rule 11(a) and (d) of the Code for rejection of the plaint. It was alleged in the said application that the plaint did not disclose a cause of action against the defendant Nos.3, 4 and 5 on the ground that the said defendants are not even remotely connected in respect of the suit premises of the case. This was alleged on the ground that the suit premises in Title suit No 227/2017 and the present suit are different. In addition to that, it was stated that the plaint ought to be rejected in terms of Order VII Rule 11(d) on the ground that the documents on the basis of which the plaintiff claimed his rights is an unregistered document and thereby being barred by the provisions of Section 17 and 17(A) of the Registration Act, 1908 and section 54 of the Transfer of Property Act, 1882.

8. It is pertinent herein to mention that the said application was filed by the defendant Nos.3 to 5 and not by the defendant Nos.1 and 2. Written

objection was filed to the said application by the plaintiff. The learned trial Court i.e. the Court of the Civil Judge No.1, Kamrup (Metro), Guwahati by an order dated 04.04.2023 rejected the said application filed for rejection of the plaint by holding that a perusal of the plaint disclosed cause of action and further a perusal of the plaint, the suit did not appear to be barred by law.

9. It is against the order dated 04.04.2023 that the instant petition has been filed under Section 115 of the Code.

10. I have heard the learned counsel appearing on behalf of petitioners as well as the learned counsel appearing on behalf of the respondent and have given due consideration to the relevant submissions.

11. It is a trite principle of law that while adjudicating an application under Order VII Rule 11 of the Code the Court is only required to look into the averments of the plaint and the documents relied thereupon. Order VII Rule 11 of the Code stipulates six conditions when a plaint can be rejected, i.e. (1) where the plaint does not disclose a cause of action; or (2) where the reliefs claimed are undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so; or (3) where the reliefs claimed are properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time fixed by the Court, fails to do so; or (4) where the suit appears from the statement in the plaint to be barred by any law; or (5) where the plaint is not filed in duplicate; or (6) where the plaint fails to comply with the provisions of Rule 9 of Order VII.

12. The proviso which has been added to the said provision categorically mandates that the time fixed by the Court for correction of the valuation or

supply of the requisite stamp paper shall not be extended unless the Court for reasons to be recorded is satisfied that the plaintiff was prevented by any cause of any exceptional nature for correcting the valuation or supplying the requisite stamp paper as may be within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff.

13. It is relevant to take note of that from the conditions where a plaint can be rejected enumerated i.e. the conditions No.2, 3, 5 and 6 permits the Court to pass appropriate orders thereby seeking compliance before taking the drastic step for rejection of the plaint. It is only for noncompliance after being granted opportunity, the plaint can be rejected. (See ***Salem Advocate Bar Association, TN Vs. Union of India*** reported in (2003) 1 SCC 49, paragraph 16). However, as regards the condition No.1 and 4 i.e. where the plaint does not disclose a cause of action or where the suit appears from the statements made in the plaint to be barred by law, the Court has no other option, but to reject the plaint.

14. This Court also finds it very useful at this stage to observe that there is a fundamental difference between a plaint not disclosing a cause of action and there is no cause of action in the suit, inasmuch as, in respect to a case falling within the ambit of the plaint does not disclose a cause of action, the Court is required only to read the contents of the plaint along with the documents relied upon and nothing more, and from there the Court has to arrive at an opinion that the plaint on a meaningful reading does not disclose a cause of action. On the other hand, the expression "no cause of action in the suit" it means that after the entire trial of the suit, wherein evidence etc., are taken, the Court comes to an opinion that the plaintiff has failed to make out a

case for the purpose of being entitled to the reliefs as sought for. {see ***Jogeshwari Devi Vs. Shatrughan Ram* reported in (2007) 15 SCC 52**}.

15. The fourth condition i.e. wherein a plaint could be rejected is when upon a reading of the statements made in the plaint, it is seen that the suit is barred by any law. The same has to be only on a perusal of the plaint and nothing more. The said aspect is apparent from the use of the words, “where the suit appears from the statement of the plaint.”

16. This Court also finds it very relevant to observe that the rejection of a plaint amounts to nipping at the bud a civil proceeding and as such, the said being a drastic measure, it is the requirement of law that the conditions contained under Order VII Rule 11 of the Code are strictly complied with. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat* reported in (2021) 9 SCC 99**, wherein the Supreme Court at paragraph 25 dealt with the aspect pertaining to Order VII Rule 11 (d) of the Code and summarized that to reject the plaint on the ground that the suit is barred by any law, only the averments made in the plaint will have to be referred to. The Supreme Court further observed that the defence made by the defendant in the suit must not be considered while deciding the merits of the application.

17. In the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others*, reported in (2020) 7 SCC 366**, the Supreme Court has dealt with the aspect pertaining to Order VII Rule 11 (a) and (d) of the Code. It was observed that the underlying object of Order VII Rule 11 of the Code is that if in a suit, no cause of action is disclosed, or the suit is barred by law, on the reading of the plaint, the Court would not permit the

plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the shame litigation so that further judicial time is not wasted.

18. This Court also finds it very relevant to take note of the judgment of the Supreme Court in ***T. Arivandandam v. T.V. Satyapal***, reported in (1977) 4 SCC 467, wherein the Supreme Court at paragraph 5 had duly observed that on a meaningful— not formal— reading of the plaint if it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the Code taking care to see that the grounds mentioned therein is/are fulfilled.

19. This Court further finds it appropriate to observe that merely because the plaintiff may not be able to get a decree in a suit in his favour on the basis of the defence to be set up by the Defendants cannot be also a ground for rejection of the plaint. In that regard, this Court finds it relevant to take note of the judgment of the Supreme Court in ***Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I***, reported in (2004) 9 SCC 512, wherein the Supreme Court categorically observed that so long the claim discloses some cause of action or raises some questions to be decided by a judge, the mere fact that the cause is weak and not likely to succeed is no ground for striking it out. Paragraphs 151 and 152 of the said judgment is reproduced hereunder:

“151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In *Vijai Pratap Singh v. Dukh Haran Nath Singh* this Court held:

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those Page No.# 9/10 allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.”

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars.”

20. In the backdrop of the above, if the Court takes note of the allegations made in the plaint, it would be seen that the defendant No.2 who is the proprietor of the defendant no.1 had initially entered into an agreement on 24.10.2016 with the plaintiff for obtaining a loan of an amount of Rs. 8 lakhs with a promise to pay the said amount by 15.05.2017. It was also made clear that as per the said averments made in the plaint including the documents filed alongwith the Plaint that if the amount is not paid within the said period i.e. 15.05.2017 then in such circumstances that the possession of the suit shop shall be handed over to the plaintiff. It is further seen from a perusal of the plaint that the defendant no.2 not only did not pay the amount of Rs. 8 lakhs but even took another amount of Rs.55,000/- and thereafter handed over the possessory

right over the suit shop to the plaintiff vide a Deed of Agreement for Sale of possessory right and also handed over possession. It was alleged that out of good faith the Plaintiff allowed the Defendant No.2 to keep the lock and key in order to remove the stationary lying there. However, the defendant No.2 after executing the said Deed of Agreement for Sale of possessory right, created a fraudulent tenancy in favour of the defendant No.3 his mother and thereby tried to frustrate the very Deed of Agreement for Sale of possessory right. Under such circumstances, from the perusal of the plaint it reveals that there is an element of fraud alleged against the defendant Nos.2, 3, 4 and 5 jointly and severely who hatched a conspiracy to deprive the Plaintiff. This Court also finds it relevant that in the Title Suit No 227/2017, the Defendant No.3 sought for the relief that she is a lawful tenant under the defendant No.2 and she cannot be evicted without following due process. In view of the pecuniary jurisdiction, the Plaintiff herein who was the Defendant No.2 in Title Suit No 227/2017 could not have filed the counter claim in the said suit for which the present suit has been filed. Under such circumstances, in the opinion of this Court, the plaint duly discloses a cause of action not only against the defendant Nos.1 and 2 but also against the defendant Nos.3, 4 and 5.

21. Now coming to the question as regards Clause-(d) of Order VII Rule 11 of the Code, the submission made by Mr. A. Das, learned counsel appearing on behalf of the petitioners is that the Deed of Agreement for Sale of possessory right is not a document which is admissible in evidence in view of Section 17 and 17(1A) of the Registration Act, 1908 and Section 54 of the Transfer of Property Act, 1882 and as such from the perusal of the statements made in the plaint, the suit is barred by law. The said submission on the face of it is totally misconceived in view of the aforestated well settled principles of law. Whether

the plaintiff would be entitled to the reliefs in the suit on the ground that the document in question would not be admissible under law in view of Section 17, 17(1A) of the Registration Act, 1908 or Section 54 of the Transfer of Property Act, 1882 has to be adjudicated by the Trial Court at the relevant time upon framing of Issues and appreciation of evidence. The said aspect cannot be said to bar the suit for the purpose of rejection of the plaint. Be that as it may, the suit also contains an alternative prayer for recovery of money of an amount of Rs. 8,55,000/- along with interest @ 18%. It is also well settled that a Plaint cannot be partially rejected.

22. Accordingly this Court is of the opinion that the learned trial Court was justified in passing the order dated 04.04.2023.

23. Consequently the instant petition therefore stands dismissed with cost of Rs.15,000/- imposed upon the petitioners who shall deposit the said amount before the learned Trial Court on the date so fixed by this Court. The said cost is imposed inasmuch as the application for rejection of the Plaint in the face of it was frivolous and vexatious and aimed at to delay the disposal of the suit.

24. This Court vacates the order dated 15.05.2023 and directs the parties to appear before the learned trial Court on 12.06.2024, on that day the petitioners who are the defendant Nos.3, 4 and 5 shall deposit the cost of Rs.15,000/-. The Plaintiff would be at liberty to file application for release of the said amount before the learned Trial Court and the learned Trial Court shall pass appropriate orders on the said application.

25. Before parting, the Court observes that the observations made herein shall be considered as observations in respect to the adjudication of an application for rejection of the Plaint and the same shall not influence the

learned Trial Court while disposing the suit.

JUDGE

Comparing Assistant