

GAHC010231812022



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

Case No. : CRP/125/2022

BLOCK DEVELOPMENT OFFICER, LAKHIPUR (E)
CACHAR TO BE REP. BY AVINASH PAUL, S/O. SRI DAYAMOY PAUL, VILL.
SRIPALLY ROAD WARD NO.II, NORTH AREA-1, P.O. LANKA, DIST. HOJAI,
ASSAM.

VERSUS

NOBEN KUMAR SINGHA AND 2 ORS.
S/O. NENA SINGHA, R/O. SHIBPUR PART-III, P.O. AND P.S. LAKHIPUR, DIST.
CACHAR, ASSAM.

2:THE STATE OF ASSAM

REP. BY DEPUTY COMMISSIONER
CACHAR
SILCHAR.

3:JUNIOR ENGINEER

LAKHIPUR DEVELOPMENT BLOCK OFFICE OF THE BLOCK
DEVELOPMENT OFFICER
LAKHIPUR DEVELOPMENT BLOCK
P.O. ND P.S. LAKHIPUR
DIST. CACHAR
ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 02.02.2024

Heard Mr. L.R. Mazumdar, learned counsel for the petitioner. Also heard Mr. D. Chakraborty, learned counsel for the respondent No. 1 and Mr. T.R. Gogoi, learned counsel for the respondent Nos. 2 and 3.

2. The petitioner has filed an application under Section 115 CPC against the impugned order dated 16.09.2022 passed by the Munsiff, Lakhimpur in T.S. No. 02/2019 whereby an application filed by the petitioner/defendant under Section 11 r/w Section 151 of CPC was rejected.

3. The case of the petitioner is that the predecessors of the plaintiff of T.S. No. 02/2019 who was the plaintiff No. 2 in T.S. No. 31/1991 along with six others had instituted the T.S. No. 31/1991 with a prayer for declaration of right, title and interest over the scheduled land and confirmation of possession, vide gift deed No. 1806 of 1948. The suit was contested by the defendants by filing written statement denying all the allegations alleged in the plaint.

4. The case of the defendants was that the predecessors of the plaintiff and the defendant Nos. 2, 3, 4 and 5 had gifted 2 Bighas of land which includes the suit land to the Chairman, local board by gift deed dated 28.12.1948 for the purpose of excavating a tank for drinking water to the people of the locality and the same was accordingly excavated and the people of the concerned locality are using the water of the said tank till now. Hence, their plea was that the suit was falsely instituted and prayed for dismissal. Accordingly, the learned trial court after conclusion of the trial passed the judgment on 30.11.1996 dismissing the suit.

5. Being highly aggrieved and dissatisfied with the judgment dated

30.11.1996, the plaintiff including the predecessor of present petitioner preferred an appeal in the court of District Judge, Cachar, Silchar vide T.A. No. 1/1997 which was also dismissed vide judgment dated 13.08.2001. Subsequently, a second appeal was preferred before this Court vide RSA No. 116/2001 which was also dismissed vide judgment dated 17.07.2012 against which no appeal has been preferred by the plaintiff side.

6. It is further the case of the petitioner is that the legal heir of plaintiff No. 2 i.e. Nena Singh had instituted a suit being T.S. No. 02/2019 against the petitioner with a new story that one Dinomoni Singh who was legal heir of one Bapton Singh during his occupation and enjoyment of land in 2nd R.S. Patta No. 119 sold out an area of 4 Kathas of land to the respondent/plaintiff on receipt of valuable consideration with specific boundaries in dag No. 213 in favour of him vide registered deed No. 128/2015. Subsequently, vide rectification deed No. 194/2018, thereby handed over possession to the plaintiff and since then he is in possession.

7. On receipt of the summons from the court, the petitioner i.e. defendant No. 2 appeared and contested the suit by filing written statement. Subsequently, he came to know that the subject matter of the present suit was similar to the subject matter in Title Suit No. 31/1991 which had already attained finality. Hence, the petitioner pleaded that the present suit i.e. T.S. 2/2019 is not maintainable which is barred under Section 11 of CPC under the principle of resjudicata for which he filed a petition before the learned trial court. The learned trial court after hearing the parties, passed the impugned order dated 16.09.2022 and dismissed the petition filed by the petitioner on the ground that there is no mention about share of Bapton Singh, the predecessor of the plaintiff.

8. In response, the learned counsel for the respondents has submitted that

there is no similarity in the name of the parties, schedule of the land or the boundaries in T.S. No. 31/1991 which has already been disposed of and the present appeal suit being No. 02/2019. Hence, the learned trial court has rightly passed the order rejecting the petition under Section 11 of CPC.

9. I have considered the submissions made by the learned counsel for the parties. I have also perused the plaint of T.S. No. 31/1991 wherein the name of the plaintiffs are shown as Radha Mohan Singh, Nena Singh, Purnima Singh, Baijayanti Singh, Imaton Singh, Nilbir Singh, Nil Kumar Singh and Nushirai Singh and the schedule of the land including the boundary shows the land measuring 13 Kathas 1 Chatak in dag No. 214 of 2nd R.S. Patta No. 89 and 12 Kathas 1 Chatak of land in dag No. 213 of 2nd R.S. Patta No. 119 of mouza-Sibpur Part-III of P.S. Lakhipur, District- Cachar, totaling an area of 1 Bigha 5 Kathas 2 Chatak and boundary shows, East- homestead of Ratan Singh and Homba Singh, West- paddy lands of Radha Mohan Singh, North- paddy lands of Nena Singh and Radha Mohan Singh, South- village path, now known as M.N.P. road.

10. In T.S.2/2019, one Noben Kumar Singha S/o Nena Singha of Lakhipur filed the case as plaintiff. The schedule of the land is 4 Kathas of land in the district of Cachar, Mouza- Shibpur Pt-III, Progon- Lakhipur pertaining to 2nd R.S. Patta No. 119, dag No. 213 an area of 4 Kathas of land duly bounded by East- land of Nena Singh in Dag No. 214, West- land of dag No. 205, North- land of dag No. 212, South- balanced land of dag No. 213.

11. I have also perused the order of the learned trial court. The operative part of the order is reproduced as below-

“After hearing both sides and going through the judgments in T.S. 31/91 and appeals thereafter I have seen that Surendra Singha was the sole owner of land measuring 1B 7K 13 Ch in Dag No. 276 in Patta No. 38 and

during 2nd re-settlement Dag 276 was converted into Dag No. 212 and 213 of 2nd R.S. Patta No. 119. That after the death of Surendra Singh his legal heirs Nilmoni Singha and Bapton Singha will inherit the land of Surendra Singha equally but in the judgments and in the petition there is no mention about the shares of Bapton Singha. It is also not known whether the share of land is included in the gift deed. There are many questions which has raised and will be cleared only after trial of the suit with the evidence of the witnesses. Hence, in such a situation I am of the opinion to reject the petition No. 733/4."

12. Section 11 of CPC deals with Resjudicata which reads as follows- "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-The expression 'former suit' shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.-For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have

been a matter directly and substantially in issue in such suit.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.-The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

13. Though res judicata is a mixed question of facts and law, however, following the dictum in ***Andanur Kalamma and Ors. v. Gangamma***, reported in ***2018 0 Supreme(SC) 213***, if the same issue has directly and substantially arisen in an earlier suit, the same cannot be re-adjudicated. The Hon'ble Supreme Court observed as under:

"For arriving at such conclusion, the Trial Court and High Court have applied the settled legal position in reference to the decisions of this Court as noticed by the High Court in the impugned judgment. The principle of res judicata as enshrined in Section 11 of CPC, is founded on

the maxim "Nemo Debet Bis Vexari Pro Una Et Eadem Causa". In a recent decision in the case of Nagabhushanammal vs. C. Chandikeswaralingam, 2016 4 SCC 434 this Court observed thus:

"Res judicata" literally means a "thing adjudicated" or "an issue that has been definitively settled by judicial decision".

14. The principle operates as a bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies and was decided and has become final, so that the parties are not vexed twice over; vexatious litigation is put an end to and valuable time of the court is saved. (See *Sulochana Amma v. Narayanan Nair*, 1994 vol.2 SCC 14).

15. In the case of ***Jaswant Singh v. Custodian of Evacuee Property, 1985 vol. 3 SCC 648***, Hon'ble Supreme Court has laid down a test for determining whether a subsequent suit is barred by res judicata: "In order that a defence of res judicata may succeed it is necessary to show that not only the cause of action was the same but also that the plaintiff had an opportunity of getting the relief which he is now seeking in the former proceedings. The test is whether the claim in the subsequent suit or proceedings is in fact founded upon the same cause of action which was the foundation of the former suit or proceedings."

16. The expression "cause of action" came to be interpreted in the case of ***Kunjan Nair Sivaraman Nair v. Narayanan Nair, 2004 vol.3 SCC 277*** has held as follows-

"The expression "cause of action" has acquired a judicially settled meaning. 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 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 in "cause of action"."

17. In Halsbury's Laws of England, the expression has been defined as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

18. Coming to the case in hand, the revision petition filed by the present petitioner is nothing but an attempt to prevent execution of the earlier decree which has attained finality.

19. After hearing the learned counsel for the parties and on perusal of the plaint of T.S. No. 31/1991 and T.S. 02/2019, it cannot be said at this stage that the schedule plot of land in both the cases are same. Hence, the order of the learned trial court does not warrant any interference.

20. Accordingly, the revision petition is dismissed and disposed of at the admission stage. No order as to cost.

JUDGE

Comparing Assistant