

GAHC020000062011

2024:GAU-NL:577



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

Case No. : RFA/6/2011

SHRI SALIKUR RAJA KHAN
S/O LATE ATIKUR RAJA KHAN,
PERMANENT R/O H/NO.52 DMC ZELIANGRONG VILLAGE AND
ALSO H/NP 418 AT MHALIE PESIEYE ROAD, DIMAPUR, NAGALAND

VERSUS

THE JAME MASJID COMMITTEE, DIMAPUR AND 19 ORS
REPRESENTED JOINTLY, COLLECTIVELY AND INDIVIDUALLY BY
THE RESPONDENTS/
DEFANDANTS

2:MD. HALIM KHAN
PRESIDENT
JAME MASJID COMMITTEE
DIMAPUR

3:MD. AHIDUR RAHMAN
WORKING PRESIDENT
JAME MASJID COMMITTEE
DIMAPUR

4:ATAUR RAHMAN
VICE PRESIDENT
JAME MASJID COMMITTEE
DIMAPUR

5:MD. ISRABUL ABDIN TALUKDAR
GENERAL SECRETARY
JAME MASJID COMMITTEE
DIMAPUR

6:MD. NAZIM UDDIN CHOWDHURY
JOINT SECRETARY
JAME MASJID COMMITTEE
DIMAPUR

7:MD. ZIAUR RAHMAN
TREASURER
JAME MASJID COMMITTEE
DIMAPUR

8:MD. MONIUL ISLAM
EXECUTIVE MEMBER
JAME MASJID COMMITTEE
DIMAPUR

9:KHOIRUL ISLAM
EXECUTIVE MEMBER
JAME MASJID COMMITTEE
DIMAPUR

10:MD. MOKSSUD AHMED CHOUDHURY
EXECUTIVE MEMBER
JAME MASJID COMMITTEE
DIMAPUR

11:MD. ABDUL BASIT
EXECUTIVE MEMBER
JAME MASJID COMMITTEE
DIMAPUR

12:MD. KAZI KHOIR UDDIN
EXECUTIVE MEMBER
JAME MASJID COMMITTEE
DIMAPUR

13:MOHAMMAD ALI KHAN
S/O LATE KHAN SHAHEB HAZI MALIGUL KHAN
HAZI PARK
M.P. ROAD
DIMAPUR
NAGALAND

14:FEROZ SHAH KHAN
S/O LATE KHAN SHAHEB HAZI MALIGUL KHAN
HAZI PARK
M.P. ROAD
DIMAPUR

NAGALAND

15:RAHIM KHAN
S/O LATE KHAN SHAHEB HAZI MALIGUL KHAN
HAZI PARK
M.P. ROAD
DIMAPUR
NAGALAND

16:ADIL KHAN
S/O SHAH KHAN
R/O NEPALI CHURCH
DUNCAN BASTI
DIMAPUR
NAGALAND

17:SHAH NAWAS KHAN
S/O LATE ABDUL ROAF KHAN

18:FAROOQUE KHAN
S/O LATE SULEMAN KHAN

19:NAUSAD KHAN
S/O LATE FARID KHAN

20:SHAJID KHAN
S/O LATE GULSHA KHAN AND GRANDSONS OF LATE KHAN
SHAHEB HAZI MALIGUL KHAN
C/O SHRI ADIL KHAN
S/O LATE SHAH KHAN RESIDING NEAR NEPALI CHURCH
DUNCAN BASTI
DIMAPUR
NAGALAN

Advocate for the Petitioner : , M WABANG,V. DEVNATH,XEPE,V. SIRIE

Advocate for the Respondent : P. B. PAUL, PFOSEKHO PFOTTE (R/1-11),SARIF AHMED

**BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

Date : 08-11-2024

Judgment & Order (ORAL)

Heard Mr. S. Dutta, learned Sr. counsel assisted by Mr. V. Devnath, learned counsel for the appellant. Also heard Mr. P.B. Paul, learned counsel for the respondent Nos. 1 to 12.

2. This is an appeal filed under Rule 29 of the Rules for Administration of Justice and Police in Nagaland 1937 (as amended) read with section 96 of the Code of Civil Procedure against the judgment and order dated 29.4.2011 passed by the learned Civil Judge, Senior Division, No.1 Dimapur Nagaland passed in CMC 25/2010 arising out of Title Suit No.1/2010 allowing the Misc. Case by rejecting the Title Suit 1/2010.

3. The facts of the case is that the appellant had filed Title Suit 1/2010 in the Court of the Civil Judge, Senior Division, No.1 Dimapur Nagaland praying for amongst others declaration and confirmation of occupational rights, title and interest over the suit land to declare the grant/permit No.LR/PER/DB/573-76(A) dated 20.02.63 passed by the competent authority as lawful, effective, operative and in force.

4. Pursuant to the filing of the said Title Suit, upon notice being issued, the respondents/defendants preferred an application

being CMC 07/2010 (re-numbered as CMC 25/2010) before the trial Court under Order 7 Rule 11 (d) read with section 151 of the CPC, 1908 for rejection of the plaint filed by the appellant/plaintiff in Title Suit 1/2010. The trial Court by judgment and order dated 29.4.2011 after hearing the parties was pleased to allow the said application by rejecting the plaint. In view of the order passed in CMC 25/2010, the trial Court was further pleased to direct by order dated 29.4.2011 in Title Suit 1/2010 that the same has become infructuous and accordingly dismissed the same. Aggrieved by the aforesaid order of the trial Court allowing the application of the respondent/defendant filed under Order 7 Rule 11 and dismissal of the suit, the present first appeal has been preferred.

5. Mr. S. Dutta, learned Sr. counsel for the appellant submits that the judgment and order of the trial Court in allowing the Application for rejection of the plaint is perverse and is liable to be interfered by the appellate Court. He further submits that though the application filed by the defendant/respondent was under Order 7 Rule 11(d), the trial Court considered it as an application under Rule 11(a) and dealt the matter which is totally perverse and amounts to violation of natural justice as the appellant did not get the opportunity to contend that the plaint discloses cause of action.

6. Mr. P.B. Paul, learned counsel for the respondent/defendant fairly submits that though the ground taken in the Misc. Case i.e CMC 07/2010 (re-numbered as CMC 25/2010), is as regard the plaint being

barred under law, the trial Court instead of considering the same has considered the matter under Rule 11(a) which is non disclosure of cause of action.

7. Heard the learned counsel for the parties and also perused the materials on record.

8. The point of determination that arises in the present appeal is whether the trial Court was justified converting the application filed by the respondent/defendant under Order 7 Rule 11(d) to that of Order 7 Rule 11(a) and deciding thereof, without giving any opportunity to the plaintiff to show cause that the plaint discloses cause of action and whether the trial Court was justified to reject the plaint on the ground of res-judicata while exercising powers under Order 7 Rule 11 of CPC.

9. Before advertng to the point of determination, pertinent to mention that the appellant before filing Title Suit 1/2010, had filed another suit in the year 2009 which was registered and numbered as C.S.1/2009. In that suit, the defendant/respondent had filed an application under Order 7 Rule 11(a) for rejection of the plaint which the trial Court after hearing the parties, by judgment and order dated 22.11.2009 was pleased to reject the plaint in C.S.1/2009. Pursuant to the order of rejection, it appears that a review petition being Review Petition No.1/2010 was also filed by the appellant which was subsequently rejected by judgment and order dated 21.4.2010. In the

present suit also, the respondent/defendant had filed application under Order 7 Rule 11(d) for rejection of the plaint. Paragraph 3 and the grounds taken in the aforesaid application are reproduced here under for ready reference:-

"3. The Petitioners state that on a plain reading of the facts contained in the plaint and the documents filed and impugned by him would clearly establish that the Title Suit of the Respondent/Plaintiff is hit by the provision of Order VII, Rule 11 (d) and Sec. 151 of CPC, inter alia, on the following grounds:

GROUND:

- A. *It is absolutely clear from the prayer portion of the plaint that the settlement of the land consisting of 6 lassas in favour of Jame Masjid Committee, Dimapur , vide Order No. Rev 14/9L-D/1-228-3-dt. 06/04/04 issued by the Deputy Commissioner, Dimapur has been challenged by the Plaintiff. The Respondent/Plaintiff also reflected that the same Order has been taken as one of the cause of actions for filling the Title Suit. Under the provisions of Assam Land and Revenue Regulations, 1886, (hereinafter shall be referred to as the Regulation, 1886) certain types of disputes are exempted from the cognizance of the Civil Court. The issue in regard to the validity or effect of any settlement cannot be questioned before the Civil Court under the provision of the Regulation, 1886. Since the Order No. Rev 14/9L-D/1-228-30 dt. 6/4/04 is purely a settlement Order made in favour of the Jama Masjid Committee and its validity has been questioned by the Respondent/Plaintiff in the Civil Court, the Title Suit of the Respondent/ Plaintiff is barred by Order VII, Rule 11(d) of the CPC, 1908 as well as by the provision of the Regulation, 1886.*
- B. *It is very clear from the plain reading of the plaint of the Respondent/Plaintiff that the Order No. Rev-2/2010-D/220-24, dt. Dimapur the 7th April, 2010 passed by the Revenue-cum-Re-Settlement Officer, Dimapur, has been challenged by the Respondent/Plaintiff claiming the relief to declare the said order as bad and inoperative in law. The Plaint also clearly reflects that the aforesaid order has been taken as one of the causes of action for filling the Civil Suit which is not permissible under the law. It is*

respectfully submitted that the proceedings undertaken by the Revenue-cum-Re-Settlement Officer, Dimapur, in the matter relating to the dispute between the Respondent/Plaintiff and the Jama Masjid Committee and consequent upon passing of the Order No. Rev-2/2010-D/220-24, dt Dimapur, the 7th April, 2010 was a judicial proceeding which cannot be again questioned before another judicial forum except by way of relief provided under the Regulation, 1886.

- C. The Respondent/Plaintiff, instead of availing the remedies available under the Regulation, 1886, has invoked the jurisdiction of the Civil Court under Sec. 9 of the CPC which is available to the Respondent/Plaintiff in view of specific bar laid down by the provisions of the Regulation, 1886, exempting the Civil Court to take cognizance of the matters enumerated under the relevant law of the Statute.*
- D. The aforesaid Order dr. 7th April, 2010, passed by the Revenue-cum-Re-Settlement Officer, Dimapur had been passed by initiating a judicial proceedings under the provision of the Regulation, 1886, and the same could not be challenged in a Civil Court as the dispute was settled by the Revenue-cum-Settlement Officer by a judicial order that falls within the purview of the matter which is exempted from the purview of the Civil Court.*
- E. The matter relating to formation of records of rights or the preparation or alteration of any document contain therein is exempted from the cognizance of Civil Court as per the provisions of the Regulation, 1886, and Sec. 9 of the CPC. The relevant documents contained in the plaint, the averment made in the plaint and the prayer portion of the Respondent/Plaintiff clearly manifest that the Respondent/Plaintiff is seeking a declaration from this Hon'ble Court to declare the Order No. 14/9L-D/1/228-30, dt. 6/04/04 as void and illegal and Order No. Rev-2/2010-D/220-24, dt. Dimapur the 7th April, 2010 passed by the Revenue-cum-Re-Settlement Officer as bad in law and inoperative against the Respondent/Plaintiff. Further the plaint seeks direction to be issued to the Revenue Authority, Dimapur, for necessary modification or*

correction of the relevant records of rights in favour of the Respondent/Plaintiff.

- F. *The proceedings undertaken before Revenue-cum-Re-Settlement Officer was relating to alteration of the records of right of the Petitioners and to demarcate the suit land in the name of the Respondent/Plaintiff by making necessary correction in the record of right. The provisions of the Regulation, 1886, bars the jurisdiction of the Civil Court in such matters and therefore, the plaint of the Respondent/Plaintiff is liable to be rejected under Order VII, Rule 11 (d) of the CPC.*
- G. *There is an inherent lack of jurisdiction of the Civil Court to entertain the Title Suit due to the aforesaid legal position and therefore the Title Suit of the Respondent/Plaintiff is not maintainable and liable to be rejected."*

10. Thus, apparent that the application is under Order 7 Rule 11(d) i.e. the suit is barred under the law.

11. Order 7 Rule 11 is reproduced here under for ready reference:-

"11. Rejection of plaint- The plaint shall be rejected in the following cases:-

- (a) where it does disclose a cause of action;*
- (b) where the relief claimed is 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;*
- (c) where the relief claimed is properly valued but the plaint is written upon proper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law'*
- (e) where it is not filed in duplicate;*

- (f) *where the plaintiff fails to comply with the provision of rule 9."*

12. Apparent that under Sub-clause (a) of the order 7 Rule 11 of CPC, Court has jurisdiction to reject the plaint when the plaint does not disclose a cause of action and under sub clause (d) of Order 7 Rule 11 of CPC, Court has jurisdiction to reject the plaint where the suit appears from the statement in the plaint to be barred by any law. Thus, the jurisdiction of the Court inter-alia to reject a plaint is either when the plaint does not disclose cause of action and or where the suit is barred by any law.

13. In the present case, the application for rejection of the plaint was filed under Order 7 Rule 11(d) which is where the suit appears from the statement in the plaint to be barred by any law. Accordingly, the plaintiff/appellant filed written statement/objection against the said rejection application filed by the respondent/defendant wherein the appellant contended that the suit is not barred under any law. Paragraph 6 B of the said written statement/objection is reproduced here under for ready reference:-

"That the contents of para No.3(c) (d) (e) (f) of the CMC No.25/10 is misleading and in founded and matter involved with misinterpretation and distortion of the relevant provision of the Assam Land and Revenue Regulation 1886, that against the illegal and arbitrary settlement and matter in issue involved with legal, constitutional and otherwise established rights shall not be challenged before the civil court against the illegal and arbitrary order of the settlement officer/Revenue Officer in reference to arbitrary above said order dated 07/04/10 in reference to order dated 06/04/04 and in regard to order dated 07/04/91 because the

hon'ble competent civil court is having jurisdiction under section 39, 154 of the said Regulation 1886, and accordingly, the hon'ble court being competent ncivil court having jurisdiction and power to pass necessary order and decree and even to set aside such arbitrary order and empowered with jurisdiction to call the relevant records involved with the matter in issue and can direct by drawing decree to modify and or correct the relevant, and this is the established law, and for the judicial notice of the hon'ble Court herein referred the case laws viz-

1. *Associated hales of India vs R.N. Kapoor AIR 1950 SC 1262, Page 530,531*
2. *Ram Sing Pritam Sing & Ors vs Chief Commissioner (Chief Administrator) Union Territory, AIR 1968 (P and H) Page 470, para 3*
3. *Imlitemjen Jamir & Ors vs State of Nagaland and Ors. @004(Suppl) GLT.71*
4. *Sukumari Dev & Ors vs Madan Deb and Ors (1911) 1GLR 236*
5. *Askar Main vs Sabad Ali CWN 23, 540 July,1918*

Whereon patta, permit settlement or allotment of land involving the parties to the disputed and their legal and constitutional rights including the affect out of the alleged illegal settlement and jurisdiction of the competent civil court was defined and rules laid down and which is/are on the respective matter in issues is operative and in force. And for the reasons the instant matter of Para No.3(c) (d) (e) (f) of the content of the C.m.C No.25/10 is not sustainable in law.

The humble respondent plaintiff further state that the matter in issue involved with the civil suit filed by him related to relevant documents and length of occupation involved with the rights as firstly occupier, land revenue payer as land holder and settlement holder vede order dated 20/02/1963 and the alleged defendant applicants alleged rights based on prima facie illegal and perpetual nature ab ignition void settlement and patta dated 06/08/1069 in favour of a deadman, namely Hazi Maligul Khan after his death on 01/04/1951 and in reference to Mutation case No.13/71 dated 17/03/1972, order dated 17/12/1991 and arbitrary order and settlement allegedly in the form of rectification vide dated 06/04/04 and arbitrary order dated 07/04/2010 in regard to the suit land and

properties, and all these needs to be settled on the substantial of the question of law and established procedure for the cause and ends of justice and needs to be settled followed with trial after settlement of issues and established by the procedure and accordingly all those contents of para No.3 (c) (d) (e) are denied in toto."

14. Apparent that the appellant/plaintiff in the written statement contended that the suit is not barred under the law.

15. However, it appears that the trial Court considered the application filed by the defendant/respondent under Order 7 Rule 11 (a) instead of Order 7 Rule 11(d).

16. Relevant portion of the Judgment and Order dated 29.04.2011 is reproduced hereunder for ready reference:-

"The Applicants/Defendants filed this Application under Order VII, Rule 11(a) R/W Sec.151 of the Code of Civil Procedure, 1908 for rejection of the Plaint in Title Suit No.1/10."

17. Reading of the judgment of the trial Court, it is apparent that the trial Court has inadvertently taken up the application of rejection under Order 7 Rule 11(a) without the application being preferred there under. It further appears that the trial Court has not considered whether the statement made in the plaint is barred by any law. It appears that the trial Court without there being any pleading as regards the plaint not disclosing any cause of action has proceeded to decide the same under Order 7 Rule 11(a). The said course adopted by the trial Court appears to be perverse and erroneous in law inasmuch as the appellant has been totally deprived of the opportunity

to show before the trial Court that the suit discloses cause of action. The respondent/defendant having filed the application for rejection of the subject plaint on the ground that the same is barred under law, the appellant/plaintiff accordingly filed its objection. However, the trial Court erroneously decided the application on the ground that the same does not disclose cause of action without giving any opportunity whatsoever to the plaintiff/appellant to show that the plaint discloses cause of action thereby causing prejudice to the plaintiff/appellant. Therefore, the order of the trial Court is totally perverse and stands vitiated. The first point is determined accordingly.

18. It further appears that the trial Court has also held that since the plaintiff has filed C.S.1/2009 on the same facts and issues which was rejected by the trial Court and there upon confirmed by the review Court, the trial Court has no jurisdiction to entertain the present suit. It appears that as the issue of res-judicata is also not taken by the respondent/defendant in the application for rejection but notwithstanding the same, the trial Court on its own have rejected the plaint on the ground of res-judicata. Reading of the grounds of rejection as stipulated in Order 7 Rule 11 of CPC, it is apparent that the same is not one of the listed ground. The issue of res-judicata involves mixed question of law and facts and hence cannot be adjudicated at the time of consideration of rejection of plaint under Order 7 of Rule 11. The same involves inter-alia consideration of the pleadings in the earlier suit, the judgment of the trial Court and the judgment of the review Courts. At the stage of adjudication under

Order 7 Rule 11 of CPC, the Court can look into only the averments made in the plaint and at the highest documents produced along with the plaint. The defence of a defendant and documents relied upon by him are not available at that stage. Therefore, the plea of res-judicata can only be decided after the pleadings are completed and evidences are being adduced. Reference is made to the decision of the Apex Court in the case of ***Keshav Sood Vs Kirti Pradeep Sood reported in 2023 LiveLaw (SC) 799***. Paragraph 5 and 6 of the aforesaid judgment is reproduced hereunder for ready reference:-

"5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither 2 the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits."

19. Thus, the principle of res-judicata cannot be invoked as a ground for the rejection of a plaint under Order 7 Rule 11(d) of the CPC. That being so, order of the trial Court rejecting the plaint of the appellant on that score is also perverse and erroneous. The second point is also accordingly determined.

20. In view of above, this Court is of the considered opinion that the order of the trial Court dated 29.4.2011 and subsequent order

dated 29.4.2011 of the learned Civil Judge, Senior Division in Title Suit 1/2010 is illegal and erroneous and is hereby set aside and quashed. However, since the application filed by the respondent/defendant under Order 7 Rule 11 (d) was not considered by the trial Court, the matter is remanded back to the trial Court for fresh consideration of the said application in accordance with law.

21. The trial Court records be accordingly returned.
22. Upon receipt of the case record, the trial Court may notify the date of appearance of the parties to do the needful.
23. The appeal is disposed of.
24. It is needless to be clarified that the issue of res-judicata is kept open.

Sd/-
JUDGE

Comparing Assistant