IN THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

RSA No. 01 of 2020

1. Mahesh Chettri

2. Naresh Chettri
Both sons of Late Lall Bahadur Chettri
Resident of Ipsing House, Sichey Busty,
Gangtok, East Sikkim.

… Appellants/Plaintiffs

Versus

1. State of Sikkim
Through,
The Chief Secretary,
Tashiling Secretariat,
Gangtok, East Sikkim.

2. PCE-cum-Secretary,
Building & Housing Department,
Government of Sikkim,
Nirman Bhawan,
Gangtok, East Sikkim,

3. The Secretary (Ministry of Home Affairs),
Government of India,
North Block, Raisana Hill,
New Delhi.

… Respondents/Defendants

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.

For the appellant	:	Mr. A.K. Upadhyaya, Senior Advocate with Mr. Sonam Rinchen Lepcha, Advocate.
For the respondent Nos. 1 and 2	:	Mr. Sudesh Joshi, Addl. Advocate General, Sikkim with Mr. Sujan Sunwar, Asstt. Govt. Advocate.
For the respondent No. 3	:	Mr. Karma Thinlay, Central Government Counsel.
Date of hearing	:	20.11.2020
Date of judgment	:	20.11.2020

JUDGMENT (ORAL)

(*Arup Kumar Goswami, CJ*)

Being aggrieved by the judgment and decree dated 30.07.2019, passed by the learned District Judge, Special Division-I, Sikkim at Gangtok, in Title

Appeal Case No.12/2017, dismissing the appeal and affirming the judgment and decree dated 26.07.2017 passed by the learned Civil Judge, East Sikkim at Gangtok in Title Suit Case No.15/2016, rejecting the plaint by allowing an application filed by the defendant no.3 under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, for short, CPC, this Second appeal is filed.

2. The suit was filed by the father of the present appellants. The case of the plaintiff as set out in the plaint is that the plaintiff is the absolute owner of a plot bearing nos.342, 343, 344 and 346 (P) measuring a total area of 0.41 acres under Gangtok Block above Tibet Road, Gangtok, which will, herein after, be referred to as the 'suit property'. The suit was filed praying for declarations that the plaintiff is the absolute owner of the suit property and the possession of the defendants over the suit property is illegal and for recovery of possession.

3. It is pleaded that the then Chogyal gave the suit property to the father of the plaintiff in the year 1969 and that in that connection, Shri. P.T Namgyal, the then Maharaja of Sikkim had passed an order on 08.09.1981 to the following effect: "We may write Mr. L.B Chettri that the land and house is granted to him in fulfilment of commitment made to his late father Mandal PB Chettri for loyal and meritorious services."

4. It is stated that an order dated 19.09.1996 was passed by the Government of Sikkim withdrawing No Objection Certificate and allotment order pertaining to the suit property (these two aspects are not spelt out in the plaint). Being aggrieved by the said actions, the plaintiff had filed a writ petition being WP(C) No.64/2001 before this Court and the same was dismissed by an order dated 21.07.2003 as against which the plaintiff had preferred an appeal before the Hon'ble Supreme Court which was registered as Civil Appeal No.6216 of 2004. Suffice it to say at this stage that by an order

dated 14.02.2013, the Hon'ble Supreme Court had upheld the order of this Court dated 21.07.2003 and that the order goes to show that by the order dated 19.09.1996, No Objection Certificate was withdrawn for the purpose of mutation proceedings and by the order dated 19.09.1996, allotment order was cancelled by withdrawing an earlier order dated 21.04.1992.

5. It is pleaded by the plaintiff that the suit property is recorded as private residence of Chogyal and when the property in question was granted by the Chogyal of Sikkim, such a grant cannot be revoked by any authority and the same had also not been revoked.

6. Further case set out in the plaint is that the defendant no.2 had filed an application under Section 5 of The Sikkim Public Premises (Eviction of Unauthorized Occupants and Rents Recovery Act), 1980, for short, the Act, against the plaintiff for eviction, which was registered as Case No. 101/2014. Thereafter, under Section 4 of the Act, a notice dated 02.12.2014 was issued to the plaintiff to show cause as to why an order of eviction should not be passed against him. The plaintiff had submitted show cause reply. Upon hearing the parties, the Prescribed Authority, East Sikkim had passed an order dated 20.01.2015 directing the plaintiff to vacate the property within one month from the date of the order. The appeal preferred under Section 9 of the Act, registered as Appeal No.01/2015, was also dismissed by an order 11.03.2015. Subsequently, the plaintiff was evicted from the suit property on 02.09.2016.

7. Defendant nos.1 and 2 had filed a common written statement and defendant no. 3 had filed a separate written statement. The defendant no.3 had filed an application under Order VII Rule 11 CPC read with Section 151 CPC for rejection of the plaint to which an objection was filed by the plaintiff stating that the defendant no.3 had failed to establish that the plaintiff had no cause of action and that the suit is barred by any law.

8. The learned Trial Court noted that the plaintiff was making the same claim which he had made in earlier cases. It was noted that the plaintiff had filed no document to show that the suit property was recorded in the name of the Chogyal as private or personal property and the documents numbered as 2, 3 and 4 filed along with the plaint did not reveal the details of the property. The learned Trial Court allowed the application taking recourse to the doctrine of res-judicata.

9. In the appeal, the learned Lower Appellate Court held that the learned Trial Court was not correct in holding that the suit was barred by res-judicata while considering an application under Order VII Rule 11 CPC read with Section 151 CPC. However, the learned Lower Appellate Court endorsed the observations of the learned Trial Court as noted above. In view of the order of Hon'ble Supreme Court dated 14.02.2013 in Civil Appeal No.6216 of 2004, the learned Lower Appellate Court held that if anybody has any right to sue against the Government of Sikkim in respect of the suit property, it was the Chogyal alone who may have the right to sue in case the High Power Committee returns a finding in favour of the Government of Sikkim and , accordingly, holding that the plaintiff did not have any cause of action with regard to the suit property, dismissed the appeal. However, inexplicably, the learned Lower Appellate Court recorded that observations made by it regarding ownership and title of the suit property will not affect the case of the appellants if trial continues.

10. Mr. A.K. Upadhyaya, learned Senior Counsel for the appellants submits that the use of the expression 'if' twice by the Hon'ble Supreme Court in the order dated 14.02.2013 passed in Civil Appeal No.6216 of 2004 makes it abundantly clear that the Hon'ble Supreme Court had not recorded any finding that the suit property had vested in the Government of Sikkim and therefore , the learned Courts below had committed manifest error of law in rejecting the

plaint by holding that there was no cause of action. He has submitted by referring to the averments made in the plaint that the plaintiff has cause of action. He has urged that plaintiff had sought for recovery of khas possession as he was dispossessed from the suit property and the same also gives rise to cause of action.

11. Mr. Sudesh Joshi, learned Additional Advocate General, Sikkim submits that a bare reading of the plaint would disclose that there was no cause of action for filing the suit for declaration in respect of the suit property in view of the order of the Hon'ble Supreme Court. He also submits that prayer for recovery of possession is a consequential relief prayed for by the plaintiff and the same cannot form a part of cause of action.

12. Mr. Karma Thinlay, learned Central Government Counsel submits that in view of the clear and categorical observation of the Hon'ble Supreme Court in the order dated 14.02.2013 passed in the Civil Appeal No. 6216 of 2004, the plaintiff did not have any right to sue in respect of the suit property and therefore, no substantial question of law arises in the instant second appeal.

13. Order VII Rule 11 CPC reads as follows:

> *11. Rejection of plaint.— The plaint shall be rejected in the following cases:—*
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> *(a) where it does not 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 returned upon paper 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; 1

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying 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 an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

14. The whole purpose of conferment of power under Order VII Rule 11 CPC is to ensure that a litigation which is meaningless and bound to prove abortive should not be allowed to consume judicial time of the Court. However, since the power conferred is a drastic one, the conditions enumerated in order VII Rule 11 CPC are required to be strictly adhered to. At the stage of consideration of an application under Order VII Rule 11 CPC, the pleas taken by the defendant in the written statement and application for rejection of plaint would be irrelevant and cannot be adverted to and taken into consideration. The plaint has to be read as a whole and the substance, and not merely the form, which has to be looked into. If the allegations in the plaint, prima facie, show cause of action, the Court cannot embark upon a journey to find out and inquire whether the allegations are true or false.

15. In ***Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr Lrs and Others,*** reported in ***2020 SCC online SC 562,*** the Hon'ble Supreme Court had held that documents filed along with the plaint are required to be taken into consideration for deciding an application under Order VII Rule 11 CPC.

16. It would be appropriate, at this stage, to reproduce the aforesaid order dated 14.02.2013 passed in Civil Appeal No.6216 of 2004, which is annexed with the plaint. The order reads as follows:

> *"This appeal has been preferred against the impugned judgment and order dated 21.7.2003 passed by the High Court of Sikkim in Writ Petition (C)No.64/2001 by way of which the High Court has dismissed the writ petition filed by the appellant challenging the order of withdrawing the no objection certificate and also cancelling the allotment made in favour of the appellant earlier.*
>
> *The facts of the case have elaborately been mentioned in the impugned judgment of the High Court and there is no need for us to repeat the same. The appellant has filed the writ petition challenging the order of withdrawal of the no objection certificate for the purpose of mutation proceedings and cancellation of allotment dated 19.6.1996 withdrawing the earlier order dated 21.4.1992. The High Court has dealt with all legal and factual issues and came to the conclusion that the appellant did not have any legal right to claim the property and thus was not entitled to maintain the writ petition. The letter or will expressed by Late Chogyal Palden Thendup Namgyal on 8.9.1981 and the application datd 3.7.1978 was filed by the appellant for allotment. If the property has vested in the State Government, there was no question of grant by Chogyal in favour of the father of the appellant. If the property had rested in the State, the High Court came to the right conclusion that the allotment made by the*

State Government was void as there was no statutory provision and it has rightly been withdrawn.

So far as the mutation proceedings are concerned, the mutation in favour of the appellant was also cancelled on the petition filed by other family members of Chogyal and the State Government has also withdrawn the no objection certificate for that purpose.

It is settled legal proposition that court should not interfere and set aside an order, if setting aside it could revive a wrong and illegal order, as it would perpetuate illegality and fraud upon the statute. In the instant case, as the order of allotment made in 1992 in favour of the appellant was void itself, quashing the order of cancellation would revive the illegal and void order of allotment. Therefore, we are of the considered opinion that the High Court has rightly dismissed the writ petition filed by the appellant.

So far as the issue of application of principles of natural justice is concerned, as the order of allotment had been void which means non est i.e. never came into existence, no person can claim the right of hearing for quashing or recalling of an order which could not have came into existence. Therefore, there can be no concept of application of the doctrine of principles of natural justice in the facts and circumstances of this case.

In view of the above, we do not find any force in the appeal and same is dismissed. However, we make it clear that in case this property come or allotted by the Central government to the Chogyal family, it will be open to the appellant to raise any dispute against them.

Any observation made herein regarding the title of the property will not adversely affect the case of the Chogyal family pending before the Central Government, if any."

17. It will be apposite to reproduce another order dated 14.02.2013 of the Hon'ble Supreme Court, passed in Civil Appeal No.6217 of 2004, which is also annexed with the plaint. The said Civil Appeal was filed by the Chogyal and the plaintiff of the present suit was one of the respondents. The order reads as follows:

"Mr. P.S. Narsimha, learned senior counsel appearing for the appellant states that the matter as to whether a particular property belongs to the Chogyal family or to the State Government has to be exclusively determined by the Central Government and for that purpose, the Central government has appointed a High Power Committee and the matter is still pending before the said Committee and in view of that, he prays and is permitted to withdraw the Civil Appeal No.6217/2004 and 6218/2004 as well as the suit filed by the appellant. Therefore, the matter adjudicated before the civil court or the High court will have no bearing so far as such rights of the appellant are concerned and it may be determined by the Central Government without being influenced by any observation made herein, if such a dispute is pending before it.

With these observations, the appeals are accordingly dismissed as withdrawn.

In view of the above, applications for impleadment do not survive in these appeals and are therefore dismissed."

18. A perusal of the order dated 14.02.2013 in Civil Appeal No.6216 of 2004 goes to show that the Hon'ble Supreme Court had held that the High Court had rightly dismissed the writ petition being WP(C) No.64/2001 by the

order dated 21.07.2003. It was observed that the High Court had dealt with all legal and factual issues and had come to the conclusion that the appellant did not have any legal right to claim the property and thus, was not entitled to maintain writ petition. The use of the expression 'if' by the Hon'ble Supreme Court in the order dated 14.02.2013 passed in Civil Appeal No.6216 of 2004 has to be understood in the context in which it was said. The order dated 14.02.2013 passed in Civil Appeal No.6217 of 2004 of the Hon'ble Supreme Court shows that a High Power Committee was appointed by the Central Government to determine whether a particular property belongs to the Chogyal family or to the State Government and the matter was pending before the High Power Committee. It is not disputed by Mr. Upadhyaya that suit property was the subject matter of WP(C) No.64/2001 and Civil Appeal No.6216 of 2004 and the particular property referred to in the order dated 14.02.2013 passed in Civil Appeal No.6217 of 2004 is also the suit property. It is in that context, an observation was made by the Hon'ble Supreme Court protecting the interest of the appellant (plaintiff of the present suit), that in case the suit property comes to the Chogyal family or is allotted by the Central Government to the Chogyal family it will be open to the appellant (plaintiff of the present suit) to raise any dispute against them. In paragraph 34 of the plaint, the plaintiff himself had stated that title to the property in question has to be settled between the palace and the plaintiff, meaning thereby, the Chogyal family and the plaintiff.

19. In the suit, no declaration was sought that the proceeding initiated under the Act and the orders dated 20.01.2015 and 11.03.2015 are illegal and void. The said orders had attained finality. It is relevant to note that the plaintiff had not specifically mentioned in the plaint the cause of action for filing the suit. Submission of Mr. A.K. Upadhyaya that prayer for recovery of khas possession gives rise to a cause of action has no merit in absence of any

challenge to the orders noted supra by virtue of which the appellant had been evicted.

20. When the plaintiff as the writ petitioner was not entitled to maintain a writ petition as he did not have any legal right to claim the suit property as held by the Hon'ble Supreme Court, it is obvious that the plaintiff did not have a right to sue for a declaration of right, title and interest in respect of the very same property and thus, there is no cause of action for filing the suit against the Government of Sikkim.

21. In ***Arivandandam Vs. T. V Satyapal and Ors,*** reported in ***(1977) 4 SCC 467***, which is also referred to by the learned Courts below, the Hon'ble Supreme Court had laid down that if on a meaningful reading of the plaint it is found to be manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, power under Order VII Rule 11 CPC has to be exercised.

22. In view of the above discussion, no substantial question of law arises in this second appeal and accordingly, the appeal is dismissed. No cost.

(Chief Justice)

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