Serial No. 08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP. No. 13 of 2016

Date of Order :18.02.2020

Smt. Dipti Chakraborty Vs. Shri. Ashish Bhattacharjee

Coram:

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Paul, Adv.
For the Respondent(s) : Mr. P.K.Borah, Adv.

i) Whether approved for reporting in Law journals etc: Yes

ii) Whether approved for publication in press: No

Per Mohammad Rafiq, 'CJ'

1. This revision petition seeks to challenge the order of the Assistant to Deputy Commissioner, East Khasi Hills, Shillong dated 12-04-2016, whereby the application filed by the petitioner/defendant under Order VII Rule 11C.P.C has been dismissed. The petitioner/defendant in the application raised the following arguments:

(a) The plaint if read as a whole does not disclose any cause of action for filing the related title suit. It also does not disclose the date or dates on which the cause of action if any has arisen. Hence, the instant suit cannot be allowed to proceed and the embargo created under Order VII Rule 11(a) comes into play and therefore the Plaint of Title Suit No. 45 (T) of 2015 is to be rejected.

(b) The opp. party/plaintiff has not only claimed declaration of his right, title etc. But he has also claimed the possession of the suit premises and in such eventuality the plaintiff is required to pay the ad-volarem court fee as per the value of suit premises. The relief claimed by the plaintiff is grossly undervalued and the plaint is written upon papers insufficiently stamped and is also presented in the wrong court and the same is required to be rejected.

(c) That the jurisdiction of this court is expressly barred under the provision of Assam Land and Revenue Regulations 1886 (as adopted by the State of Meghalaya) and therefore the instant suit cannot be entertained in its present form and therefore liable to be rejected.

(d) That the suit is barred by the principle of waiver, estoppels and acquiescence.

(e) That the suit is barred by limitation and no explanation, whatsoever has been offered nor any explanation for condonation filed to enable the plaintiff to file the present suit. Such be the case the suit is expressly barred by law and as such not maintainable in its present form and the plaint of Title Suit no. 45 (T of 2015) is liable to be rejected.

(f) That the plaint is not maintainable in its present form as the opp.party/plaintiff did not verify the pleadings and statement set forth in the plaint and on this ground alone the plaint as filed by the opp.party/plaintiff is defective and incomplete and is liable to be rejected for non compliance of the provision of Order VI Rule 15 of the CPC which says that every pleading shall be verified at the foot by the party or by one of the parties' pleadings or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

2. While dealing with the argument that the jurisdiction of the Court is expressly barred by the provision of the Assam Land And Revenue Regulation, 1886 (for short the Regulations of 1886), learned Court below, upon considering Section 154 contained in Chapter IX of the said

Regulation and Full Bench decision of the Gauhati High Court in ***Daularam Lakhani vs. State of Assam And Ors. 1989 (1) GLJ 37***, held that Section 154 of the Regulation does not in any manner bar the Civil Court from entertaining the suit for declaration of title and recovery of possession.

3. Mr. K.Paul, learned counsel for the petitioner argued that the case set up by the defendant before the Court below was that clauses (a) and (c) of Section 154(1) would be attracted, but the fact is that actually Section 154 was substituted by new Section 154 vide the Meghalaya Land and Revenue Regulation (Application And Amendment) Act, 1972 (for short the Act of 1972), the impugned order has thus been passed relying on un-amended Section 154 of the originally promulgated Regulations of 1886 which contained as many as fourteen prohibitory clauses viz., (a) to (n).

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4. On the other hand, Mr. P.K.Borah, learned counsel for the respondent, has relied on Section 62, given in Chapter IV of the Regulations of 1886, which specifically ordained that nothing contained in this Chapter and nothing done in accordance therewith, shall be deemed to preclude any person from bringing a suit to the Civil Court for possession of, or for declaration of his right to any immovable property to which he may deem himself entitled.

5. We deem it apposite to reproduce Section 62 (supra) which reads as under:

> *"**62**. Nothing contained in this Chapter and nothing done in accordance therewith shall be deemed to:-*

(a) *preclude any person from bringing a suit in the Civil Court for possession of, or for declaration of his right to any immovable property to which he may deem himself entitled; or*

(b) *render the entry of any land in any register under this Chapter as revenue-free an admission on the part of the Government of the right of the person in whose name the land may be entered, or an admission of the validity of the title under which the said land is held revenue-free."*

6. Perusal of the impugned order indicates that the learned Court below has indeed proceeded to decide the matter on the basis of the un-amended provisions of Regulation 154, whereas the amended Section 154 reads as follows:

*"**154. Matters exempted from cognizance of Civil Court**. – Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any manner regarding ejectment of any person from land over which no person has acquired the right of a proprietor, land-holder or settlement-holder and the disposal of any crop raised, or any building or other construction erected without authority on such land."*

7. A careful reading of the saving clause given in Section 62 (supra) makes it clear that nothing contained in Chapter IV of the Regulation of 1886 and done in accordance therewith, shall preclude any person from bringing a suit in the Civil Court, for possession of, or for declaration of, his right to any immovable property to which he may deem himself entitled to. However, the substituted Section 154 in Chapter IX vide the Act of 1972, stipulates that except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any matter regarding ejectment of any person from land over which no person has acquired the right of a proprietor,

land-holder or settlement-holder and the disposal of any crop raised, or any building or other construction erected without authority on such land.

8 A bare reading of the impugned order would reveal that the learned Court below while deciding the application filed by the defendant/petitioner has not examined the interplay of the newly inserted Section 154 with Section 62 of the Regulation of 1886. Since the learned Court below has not examined these two Sections of the Regulation, expression of any opinion on this issue, one way or the other, by this Court, might prejudice the case of either of the parties. We are however of the firm view that the question whether the Civil Court would not be debarred from exercising jurisdiction with reference to Section 154 (supra) regarding ejectment of any person from the land over which no person has acquired the right of a proprietor, land-holder or settlement-holder and the disposal of any crop raised, or any building or other construction erected without authority on such land, would be a mix question of law and fact. This cannot form the basis for an argument that Section 154 would create statutory bar on maintainability of the suit filed by the plaintiff/respondent for declaration of title and recovery of possession for the purpose of rejection of the plaint with reference to Order VII Rule 11 CPC. On the other hand, what bearing Section 62 would have on the maintainability of the suit before the Civil Court has also not been examined by the Court below. In our considered view, therefore, the Court below, while proceeding with the matter, may frame specific issues on this aspect, whether the suit would, in the present case, be maintainable despite what has been prescribed in Section 154, by virtue of the saving clause in Section 62 of the Regulation of 1886.

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9. Coming now to another argument whether the plaint in the present case does not disclose any cause of action and therefore, should have been returned and the suit dismissed, in view of the provision of Order VII Rule 11 CPC, the Supreme Court in ***Church of Christ Charitable Trust and Educational Charitable Society vrs. Ponniamman Educational Trust (2012) 8 Supreme Court Cases 706,*** para 13 of the report, expounded the meaning of "the cause of action" in the following words:-

> *"13. While scrutinising the plaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue".*

The Supreme Court in ***A.B.C. Laminart (P) Ltd. vrs. A.P. Agencies (1989) 2 SCC 163*** (SCC p. 170 para 12) also explained the meaning of "cause of action" in the following words:

> *"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possible accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff".*

The Supreme Court in ***Bloom Dekor Ltd. vrs. Subhash Himatlal Desai (1994) 6 SCC 322 para 28 (***SCC p. 328 para 28*)*** of the report held as under:

> *"28. By 'cause of action' it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court, (Cooke v. Gill); in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit".*

10. Learned court below having considered the provision of Order VII Rule 11 C.P.C and the argument that the plaint does not disclose any cause of action, on analysing the law laid down in cited case law, held as under:

> *"It is trite law that the cause of action is a bundle of facts and it has been held in a catena of judgements that the question whether the plaint discloses a cause of action or not should be determined on the basis of averment made in the plaint alone. And whether the plaint discloses a cause of action is a question of fact which has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct and if the plaint discloses some cause of action which requires determination by the Court, then the plaint cannot be rejected by the Court by exercising power under the mandate of Order-VII Rule 11(a) C.P.C.*
>
> *I have read the plaint of the instant suit wherein it is stated that the plaintiff's father (L) Jyotirindra Bhattacharjee was the original allottee of Plot No. 38 at R.R. Colony, Umpling, Shillong-6 measuring more or less 395.07 sq.m. It is also stated that the plaintiff's grandfather who was a medical practitioner constructed the Town Pharmacy, G.S.Road, Shillong-1 and after a couple of years the plaintiff's father rented an accommodation nearest possible to the said pharmacy as it was not possible to run the pharmacy commuting from RR Colony, Shillong during those days. It is stated that the plaintiff's father allowed one Dakshina Ranjan Chakrabarty and his family to reside in the homestead he had built upon the plot no. 38 and that the said facility was given to Dakshina Ranjan Chakrabarty only for his life time because it was he who had helped the plaintiff's father with Rs. 50,000/- for construction of the homestead and no house rent*

was levied for the accommodation. It is stated that Smti. Dipti Chakrabarty, daughter of Dakshina Ranjan Chakrabarty issued a notice through the office of the ADC (Rev.), Shillong, inviting objection from interested persons against her prayer for sanction of the government to sell the plot no. 38 R.R. Colony, Shillong-6 and the said notice dated 13.05.2010 was seen on the notice board of the DC's Office after about three weeks of the application dated 24.04.2010 of the plaintiff's father praying for issue of patta to him for plot no. 38. It is also stated that the plaintiff's father claimed his ownership by writing a registered letter to Smti. Dipti Chakrabarty but she had refused to accept the letter from the post man. It is also stated that the plaintiff's father also wrote an application to the ADC (Rev.), East Khasi Hills, Shillong praying for staying the grant of permission to sell the suit property (Plot No. 38). It is stated that during the pendency of the enquiry by the office of the ADC (Rev.) the plaintiff's father expired on 1st June, 2012 due to old age related ailments. The matter was then followed by the plaintiff and on 24-07-2014 he filed one application and the defendant filed her show cause wherein it was revealed that the defendant with her ill conceived motive was planning to sell the property lawfully belonging to (Late) Jyotirindra Bhattacharjee vis-à-vis his successors in interest. It is also stated that the defendant has obtained the lease deed in the name of her mother (L) Kunti Chakravorty and later to herself by committing fraud and misrepresentation.

On reading of the plaint, clearly a cause of action accrued to the opp.party/plaintiff, successors-in-interest who are claiming that the original allotee of plot no. 38, R.R. Colony, Umpling, Shillong-6 is (L) Jyotirindra Bhattacharjee. In the facts and circumstances of the case, a right accrued to the plaintiff who are the successors-in-interest of (L) Jyotirindra Bhattacharjee to sue and to pray for a declaration of right, title, interest to the suit property of (L) Jyotirindra Bhattacharjee. Whether the plaintiff has any right, title or interest on the said plot of land is another issue.

Upon perusal of the plaint, the paragraphs which are relevant is 6, 7, 9 wherein the plaintiff has stated that the defendant issued a notice through the office of the ADC (Rev.), Shillong, inviting objection from interested persons against her prayer for sanction of the government to sell the plot no. 38, R.R. Colony, Shillong-6 and the said notice dated 13-05-2010 was seen on the notice board of the DC's office after about three weeks of the application dated 24-04-2010 of the plaintiff's father praying for issue of patta

to him for plot no. 38. It is also stated the plaintiff's father also wrote an application to the ADC (Rev.), East Khasi Hills, Shillong praying for staying the grant of permission to sell the suit property (Plot No. 38).

On further perusal of the plaint and the materials enclosed it is also evident that the defendant also filed her show cause to the application dated 24-07-2017 filed by the plaintiff to the ADC (Rev.).

Therefore, as stated earlier, the test would be as long as the claim discloses some cause of action or if it raises some questions which is fit to be decided, the plaint cannot be struck down on that ground.

Thus, considering the entire material on record, I am of the considered view that there is a cause of action for the instant suit and that the plaint cannot be rejected on the ground of Order –VII Rule 11 (a) C.P.C."

11. Having gone through the pleadings of the plaint and the impugned order and considering the ratio of judgment of the Supreme Court cases, we do not find any infirmity with the view taken by the learned Court below. We are also not inclined to countenance the arguments that plaint in the present case does not disclose any cause of action.

12. No other argument has been pressed before us.

13. The revision petition is dismissed with the above observations.

14. Registry is directed to return the original record of the Court below forthwith, with direction to the trial court to expedite the trial.

(W.Diengdoh)
Judge

(Mohammad Rafiq)
Chief Justice

Meghalaya
18.02.2020
"Samantha PS"