GAHC010271802019

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

Case No. : CRP(I/O)/370/2019

DEBABRATA BHATTACHARJEE
S/O- LATE INDRA KUMAR BHATTACHARJEE, R/O- OLD MISSION ROAD, KARIMGANJ TOWN WARD NO 25, P.O, P.S AND DIST- KARIMGANJ, ASSAM

VERSUS

NIZAM UDDIN AND 4 ORS.
S/O- LATE SAJJAD ALI, R/O- VILL AND P.O- BAROPUNJI, P.S AND DIST- KARIMGANJ, ASSAM

2:THE STATE OF ASSAM
REP. BY THE DEPUTY COMMISSIONER
KARIMGANJ
P.O
P.S AND DIST- KARIMGANJ
ASSAM

3:THE DEPUTY COMMISSIONER
KARIMGANJ
P.O
P.S AND DIST- KARIMGANJ
ASSAM

4:THE CIRCLE OFFICER
KARIMGANJ CIRCLE
P.O
P.S AND DIST- KARIMGANJ
ASSAM

5:THE SR SUB REGISTRAR
KARIMGANJ
P.O
P.S AND DIST- KARIMGANJ

ASSA

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

ORDER

Date : 03-12-2020

Heard Mr. P. K. Roy, learned counsel for the petitioners. Also present Mr. A. Chakraborty, learned Govt. Advocate for all the respondents.

Notice was duly served on the respondent no.1, as per the office note dated 10.6.2020. However none entered appearance representing the said respondent No.1 for which the revision petition is heard ex-parte against him. The respondent No.1 as the plaintiff filed Title Suit No. 63/2018 in the court of learned Civil Judge, Karimganj seeking for specific performance of contract on the basis of deed of agreement for sale/Bainamapatra dated 26.8.2017 purportedly executed by the present defendant petitioner. The plaintiff respondent No.1 sought for the following reliefs in the said Title Suit No. 63/2018:

" *In the premises it is therefore plaintiff prayed that a decree be passed against the defendants interalia:*

A) For a decree declaring that the plaintiff is entitled to get registered Sale Deed in his favour in respect of the suit land as per the term and condition of the Bainamapatra i.e. agreement to sale, dated 26.8.2017 on deposit of Rs.13,00,000/- (rupees six lacs) only out of total consideration amount of Rs.18,00,000/-(rupees eighteen lacs) only to the defendant No.1.

B) For giving a direction to the defendant No.1 to execute and register the sale deed in favour of the plaintiff in respect of the suit land on receipt of remaining consideration money of Rs.13,00,000/- (rupees thirteen lacs) only and in alternative the plaintiff is entitled to get same through court of law.

C) For perpetual injunction restraining the defendant No.1 from selling the suit land or any part

thereof to any other person(s) except the plaintiff and from dispossess the plaintiff from the suit land and for injunction restraining the defendant nos. 2 and 3 from issuing any sale permission in respect of the suit land and restraining the defendant no.4 from registering any sale deed in respect of the suit land.

D) For any other or further relief(s) of which this Hon'ble Court may deem fit and proper.

E) For awarding cost and compensation of this suit."

The present petitioner defendant filed his written statement alongwith the counter claim seeking for the following reliefs :

"That the defendant/counter claimant therefore prays for a decree against the plaintiff –

i) For directing the plaintiff to pay Rs.1,000/- per day as compensation on failure of the plaintiff to take the sale deed in his name by paying the remaining consideration money of Rs.13,00,000/-(rupees thirteen lacs) to the answering defendant/counter claimant from the date of expiry of the time fixed by this Ld. Court to get the sale deed in respect of the suit land on payment of the said Rs. 13,00,000/- (rupees thirteen lacs) only to the defendant /counter claimant.

ii) For realisation of said compensation together with interest till the payment of the said amount.

iii) For costs and compensatory costs of the suit and counter claim

iv) For any other relief or reliefs as the court shall deem fit and proper."

The plaintiff respondent No.1 filed his written statement against the counter claim and subsequent thereto on 18.7.2019 filed an application under Order VI Rule 17 CPC seeking for introducing the following amendments in the written statement :

"***<u>Schedule of proposed amendment :-</u>***

But if the defendant No. 1 will fails to mutate his name in respect of the suit dag of land to get sale permission to execute and register the sale deed and solve the matter of problem in the settlement record within the stipulated period fixed by the court then the defendant no.1 bound to return back the received amount of Rs.5,00,000/- (Rupees five lacs) only from the plaintiff with cost and compensation of the suit"

The present petitioner defendant filed his written objection stating that the introduction of said proposed amendment would change the nature of the suit and would cause delay in disposal of the same. On the basis of the said amendment petition Misc Case No. 111/2019 arising out of the Title Suit No. 63/2018 was initiated and the same was disposed of vide the impugned order dated 3.8.2019. By the said impugned order the amendment sought for by the plaintiff respondent No. 1 was allowed and while doing so , the learned court below held as follows:

"*I have considered the submissions of learned counsels of both sides and gone through the pleading and found that amendment prayed by the plaintiff will not change the nature and feature of the suit and the same is required in the prayer portion. Further, the suit is in the initial stage and amendment will not hamper either of the parties."*

Mr. Roy assailed the impugned order on the ground that the proposed amendment itself is contradictory inasmuch as on one hand, the petitioner respondent sought for enforcement of contract for agreement for sale and on the other hand, the amendment sought to be introduced put condition that if the defendant petitioner failed to mutate his name in respect of the suit dag to get sale permission and solve the matter in the settlement record, the defendant petitioner is bound to return back the amount of Rs. 5 lacs with cost and compensation of the suit. It is further stated that the defendant petitioner also filed his

counter claim seeking for compensation against the petitioner respondent. Further the amendment sought to be introduced is not in consonance with the requisites of Section 22 of the Specific Relief Act, 1963. For the said reason Mr. Roy submits that the court below wrongly exercised its jurisdiction by allowing theamendment.

I have considered the submission made by Mr. Roy and also perused the impugned order alongwith the proposed amendment sought for. Though Mr. Roy has urged that the amendment sought to be introduced are contradictory to the main relief in the suit, this court restricts itself from examining the merit of the proposed amendments. However as per the proposed amendments, the petitioner respondent has sought for refund of Rs 5 lacs purportedly the advance sale consideration.

Section 22 of the Specific Relief Act, 1963 stipulates that notwithstanding anything to the contrary contained in the Civil Procedure Code, 1908 any person suing for specific performance of contract for transfer of immovable property in an appropriate case can ask for relief for possession, partition, refund of earnest money etc. It is also stipulated in the said Section 22 no relief including the refund of earnest money shall be granted by the court unless it has been made a specific claim in the suit and for that purpose, the court shall at any stage of the proceeding allow him to amend the plaint on such term as may be just for including a claim for such relief.

Though the amendment has been sought for under Order VI Rule 17 CPC, but as the suit is for specific performance of contract for transfer of immovable property, the court below has to apply its jurisdiction under Section 22 of Specific Relief Act, 1963 because of the non obstante clause i.e. notwithstanding anything to the contrary of the Code of Civil Procedure .

In my considered view the amendment sought for by the plaintiff respondent seeking for refund of the earnest money was rightly allowed and I do not find any wrong application of the jurisdiction by the court below and as such , this revision petition stands dismissed. Interim order if any, stands vacated.

JUDGE

Comparing Assistant