

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 3516 of 2014

RAMANANDA SAHANA & ORS.
VS.
PARTHA DAN & ORS.

For the Petitioners	: Mr. Kaustav Chandra Das, Adv.
For the O.P. Nos. 5 & 6	: Mr. Sanjoy Mukherjee, Adv. Mr. Bodhisattwa Chatterjee, Adv. Mr. Arghadip Das, Adv.
For the O.P. No. 1	: Mr. M.P. Gupta, Adv. Mr. Shamik Bagchi, Adv.
Hearing concluded on	: 31 st July, 2023
Judgement on	: 22 nd September, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Article 227 of the Constitution of India challenges the order dated 2nd September, 2014 passed by learned 9th Court of Civil Judge (Senior Division) at Alipore, South 24 Parganas in Title Suit No. 41 of 2014 (T.S. No. 3257 of 2008) filed by the petitioners which have been arrayed as defendant nos. 3 to 6 in the suit.
2. For the sake of convenience the parties to this proceeding would be referred to as they have been arrayed in the suit.
3. Briefly stated, the plaintiffs filed the suit challenging the validity of the deed sale dated 23rd April, 2008 executed by the Trustees in favour of Khusbindar Singh and Nillu Kaur. According to plaintiffs, the

registered instrument by which the property was transferred is a void document. It is contended that plaintiff no. 3 happens to be the mother of the plaintiff no. 1, and sister of defendant nos. 4 to 6. The plaintiff nos. 1 and 3 were in permissive possession in respect of part of the suit property. But now their status has changed to that of trespasser post the sale.

4. Plaintiff no. 2, Samir Kumar Sahana, is a lunatic and does not have any earthly wisdom. The plaintiff nos. 1 and 3 since had no locus standi to maintain the suit, they by practicing fraud, used the name of Samir Kumar Sahana and depicted him as plaintiff no. 2. The purported signature of plaintiff no. 2 on the plaint is forged. The defendants filed an application under Order V Rule 3 of the Code of Civil Procedure seeking direction for production of plaintiff no. 2 before the learned Trial Court. But the prayer was rejected.
5. Aggrieved thereby the defendants preferred application under Article 227 of the Constitution of India which was disposed of by the Coordinate Bench (Hon'ble Justice Soumen Sen) with the finding that *"However, this order shall not prevent the plaintiffs from curing any defect in the plaint if there be any"*.
6. The plaintiff no. 1, thereafter, filed an application on 17th January, 2013 with a prayer to treat the additional verification and additional affidavit as part of the pleadings.
7. The defendants opposed the application and filed two other applications under Order VI Rule 16 of the Code of Civil Procedure for expunging some expunction of the averments from the plaint as well as

an application under Order 1 Rule 10 (2) of the Code of Civil Procedure for striking out the names of the plaintiffs except the plaintiff no. 1.

8. Learned Trial Court by the common order disposed of all the applications. The prayer of the plaintiff no. 1 was allowed and the additional affidavit was treated as part of plaint while the application under Order VI Rule 16 and Order 1 Rule 10(2) of the Code of Civil Procedure, filed by the defendants were rejected.
9. Heard Mr. Kaustav Chandra Das, learned Counsel for the defendant petitioners and Mr. M.P. Gupta, learned Counsel representing the plaintiffs opposite party no. 2 and Mr. Sanjoy Mukherjee, learned Counsel representing the opposite party nos. 5 and 6.
10. Mr. Kaustav Kumar Das, learned Counsel for the petitioners strenuously argues that the plaintiff no. 1 practices fraud upon the Court and incorporated the name of plaintiff no. 2 in the Cause Title fraudulently when it was indicated that the suit cannot be maintained in absence of any of the trustees as plaintiff.
11. The plaintiff no. 2, contending by Mr. Das is lunatic, since birth he has been staying at Kodarma and he could not have executed the vakalatnama. His signature was forged by the plaintiff no. 1 and at a subsequent point of time his name was inserted in the cause title of the plaint by hand. Thus the plaintiff no. 1 practiced fraud upon the Court. To buttress his argument Mr. Das takes me to the orders passed by the Co-ordinate Bench indicating "Mammoth fraud" practiced upon the Court.
12. Refuting such contention of Mr. M.P. Gupta, learned Counsel for the opposite party no. 2 submits that the plaintiff nos. 1, 2, 3 and 4

conjointly filed the suit. True it is while considering C.O. No. 3969 of 2012, Hon'ble Co-ordinate Bench made an observation that the suit appears to have been instituted by Partha Dan and liberty was given to cure the defect, if any, pursuant to such direction the plaintiff Partha Dan filed application and submitted additional verification and additional affidavit with a prayer to treat additional the verification supported by affidavit as part of the plaint and the prayer was allowed. Learned Trial Court did not commit any jurisdictional error by passing the orders impugned. It is further contended that whether the plaintiff no. 2 is lunatic or not is a question of fact, which prima facie has to be substantiated by the defendants who are depicting the plaintiff no. 2 as lunatic.

13. According to Mr. Gupta, the plaintiff no. 1 had no reason to file additional verification or affidavit. The plaint was filed following the procedural mandate as laid down under Rule 15 of the Order VI of the Civil Procedure Code.
14. Mr. Sanjoy Mukherjee, learned Counsel representing the defendant no. 1 and 2 submits that there is every reason to presume that fraud was practiced upon the learned Trial Court. Without any formal order of amendment the name of the plaintiff no. 2 could not have been incorporated in the cause title of the plaint by hand. It is an act of desperation on the part of the plaintiff no. 1 to keep the suit afloat.
15. The defendants as it appears from record prayed before the learned Trial Court for striking out part of the pleadings under Order VI Rule 16 of the Code of Civil Procedure precisely on the ground that the plaintiff

no. 2 being lunatic the content of paragraph nos. 4, 5, 6, 9, 10 and 11 may be deleted.

16. Rule 16 of Order VI envisages :-

“Order VI Rule 16 CPC - Striking out pleadings

Order 6 Rule 16 of Code of Civil Procedure 1908 - Striking out pleadings

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, of

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.”

17. This object of Order VI Rule 16 of the Code of Civil Procedure is to ensure that party to a suit should present the pleading in an intelligible form without causing any embarrassment to his adversary. It is kind of extraordinary power which requires extreme care and caution and as well as circumspection.

18. The Court is to exercise this extraordinary jurisdiction if it considers that the pleadings are unnecessary, scandalous, frivolous and vexatious or tend to embarrass, prejudice or delay the fair trial or is the manifestation of abuse of process of Court.

19. Normally, Court cannot direct the parties as to what should be the pleadings and how it should be prepared.

20. If the pointes as laid down under Rule 16 are not violated, the parties should have the liberty to project an arguable issue through pleadings.

21. In this plaint nothing has been stated in the breach of the Rule as laid down under Rule 16 of Order VI of the Code of Civil Procedure.
22. So far verification of pleading is concerned, it could not have been done by filing an application, it is part of pleading but at the same time Rule 15 of Order VI enunciates that pleadings shall be verified by one of the parties or by one of the parties or by some other persons proved before the satisfaction of the Court to be acquainted with the facts of the case and the person verifying the pleading was also furnished an affidavit in support of his pleading.
23. Order V Rule 15 of the Code of Civil Procedure envisages :-
- “Order V – Issue and service of summons*
- 15. Where service may be on an adult member of defendant’s family.- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.”*
24. As a general rule, every pleading must be signed by the party or by one of the parties or by the pleader. Every pleading must be verified by the party or by one of the parties. The verification must be signed on an affidavit. The person verifying the pleadings should also furnish an affidavit in support of pleadings. A defect in the matter of signing and verification of pleading is a mere irregularity and can be cured, with the leave of the Court, at a later stage of the suit. Neither the suit can be dismissed nor any adverse order can be passed against the party for defect or irregularity in signing the verification.

25. The verification appended to the plaint if made by one of the parties to the pleadings supported by affidavit it cannot be held to be fatal. If the person verifying the pleading does not make the statement that he is signing the pleadings on behalf of all the plaintiffs and with their authorization, it is a mere irregularity and by subsequent verification supported by affidavit the same can be regularized which has been done in this case.

26. In **SALEM ADVOCATE BAR ASSOCIATION (2) VS. UNION OF INDIA** reported in **(2005) 6 SCC 344** Hon'ble Apex Court held :-

"The requirement of filing affidavit in support of pleadings is not illegal and unnecessary. The same has the effect of fixing additional responsibility on the deponent as to truth of facts stated in the pleadings."

27. In **SATHI VIJAY KUMAR VS. TOTA SINGH** reported in **2007 AIR SCW 304** Hon'ble Supreme Court held :-

"32. At the same time, however, it cannot be overlooked that normally a Court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the Court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection [vide [Roop Lal v. Nachhatar Singh](#), (1982) 3 SCC 487 : AIR 1982 SC 1559; [K.K. Modi v. K.N. Modi](#), (1998) 3 SCC 573 : AIR 1998 SC 1297; [United Bank of India v. Naresh Kumar](#), (1996) 6 SCC 660 : AIR 1997 SC 3]."

28. In **ROOP LAL SATHI VS. NACHHATTAR SINGH** reported in **AIR 1982 SC 1559** Hon'ble Apex Court held :-

“20. The order passed by the High Court directing the striking out of paragraphs 4 to 18 of the election petition can hardly be supported. It is not clear from the order that the High Court proceeded to act under Order VII, r. II (a) or under Order VI, r. 16 of the Code in passing the order that it did. It is rightly conceded that the High Court could not have acted under Order VII, r. II (a) of the Code. Where the plaint discloses no cause of action it is obligatory upon the Court to reject the plaint as a whole under Order VII, r. II (a) of the Code, but the rule does not justify the rejection of any particular portion of a plaint: Mulla's Civil Procedure Code, 13th Edn., Vol. 1, p. 755. It is therefore necessary to consider whether the order passed by the High Court could be justified under order VI, r. 16 of the Code, which reads as follows:

"16.Striking out pleadings-The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court."

29. In **AJAY ARJUN SINGH VS. SHARADENDU TIWARI** reported in **AIR 2016 SC 4087** Hon'ble Supreme Court held :-

“5. Before we examine the various questions that arise in this appeal, we think it profitable to examine the scheme of Order VI, Rule 16.

"16. Striking out pleadings - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
(c) which is otherwise an abuse of the process of the Court."

It authorises the court to order that any matter in any pleading before it be struck out on the grounds specified under clauses (a), (b) and (c). Each one of them is a distinct ground. For example, clause (a) authorises the court to strike out the pleadings which may be (i) unnecessary, (ii) scandalous, (iii) frivolous, (iv) vexatious. If a pleading or part of it is to be struck out on the ground that it is unnecessary, the test to be applied is whether the allegation contained in that pleading is relevant and essential to grant the relief sought. Allegations which are unconnected with the relief sought in the proceeding fall under this category. Similarly, if a pleading is to be struck out on the ground that it is scandalous, the court must first record its satisfaction that the pleading is scandalous in the legal sense and then enquire whether such scandalous allegation is called for or necessary having regard to the nature of the relief sought in the proceeding. The authority of the court under clause (c) is much wider. Obviously, such authority must be exercised with circumspection and on the basis of some rational principles.

6. The very purpose of the Rule is to ensure that parties to a legal proceeding are entitled ex debito justitia to have the case against them presented in an intelligible form so that they may not be embarrassed in meeting the case. "

30. In absence of anything to indicate that the averments made in the plaint breaches the provision of Rule 16 of Order VI of the Code of Civil Procedure, learned Trial Court had sufficient reason to reject the prayer.

31. The suit is for declaration and permanent injunction. Plaintiff no. 2 is one of the trustees and suit is not maintainable in absence of any of the trustees. Order 1 Rule 10 of Code of Civil Procedure postulates :-

"10(2) Court may strike out or add parties.- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such term as May appeared to the Court to be just, order that the name of any party improperly joined whether as plaintiff or defendant, be struck out, and that the name of any person who or to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added".

32. The Court is therefore, conferred with power to strike out the name of a party who is improperly joined, or not necessary party either on application or without application, but the condition precedent is that the Court must be satisfied that the presence of the party would be necessary in order to effective and complete adjudication of the lis. Sub-Rule 2 of Rule 10 of Order 1 says that necessary parties are the persons who ought to have been joined as party as suit in vast to the constitution of proper suit without whom no relief can be passed. A person may be considered as necessary party if (i) There must be right to some relief against him. (ii) His presence should be necessary to enable the Court to effectually and completely adjudicate upon and settled all the questions involved in the suit.

33. As I have indicated that the present suit is a suit for declaration and permanent injunction and the plaintiff no. 2 has sufficient interest in the property, there can be no reason to strike out his name. Therefore,

learned Trial Court cannot be said to have committed any jurisdictional error in not acceding to the prayer of the petitioner to strike out the name of plaintiff no. 2 Samir Kumar Sahana.

34. A person cannot be said to be lunatic without there being declaration from the competent Court of law.
35. It is asserted by defendants that plaintiff no. 2 is of unsound mind and he is not competent enough to protect his interest. It goes without saying that the Court plays the role of loco parentis for the matter or for the person incapable of protecting his or her interest for the reason of minority or unsoundness of mind or mental infirmity.
36. To invoke the provision of Order XXXII prima facie satisfaction as to the status of the plaintiff as person of unsound mind is a must.

In absence of any document prima facie to substantiate the mental state of the plaintiff no. 2 at this stage it would be wild guess to consider the plaintiff no. 2 as person of unsound mind.

37. It is submitted at the bar that witness action has not yet been started. Learned Trial Court, in that event, is directed to hold first hearing of the suit under Order X of the Code of Civil Procedure and in the process to examine the plaintiff no. 2 in the light of the Rule 2 of Order X of the Code of Civil Procedure. However, learned Trial Court will be at liberty to examine any other person on behalf of the plaintiffs as well apart from plaintiff no. 2. The order impugned does not warrant any interference.
38. This revisional application is thus disposed of, however, without cost. Pending applications, if any, stand disposed of.

39. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court immediately.
40. Urgent photostat certified copy of this judgement if applied for, should be made available to the parties upon compliance of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)