

IN THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Revisional Jurisdiction)

CRP No. 01 of 2019

1. Smt. Shanti Subba,
Wife of Shri Dil Kumar Subba,
Resident of Namli Busty,
P.O. and P.S. Ranipool,
East Sikkim.
2. Shri Bal Bahadur Subba
Son of Late Yakha Limboo
Resident of Tumlabong, Namli Busty,
P.O. and P.S. Ranipool,
East Sikkim.
3. Shri Kishore Subba
Son of Shri Bal Bahadur Limboo
Resident of Tumlabong, Namli Busty,
P.O. and P.S. Ranipool,
East Sikkim.
4. Shri Karna Bahadur Subba
Son of Shri Bal Bahadur Limboo
Resident of Tumlabong, Namli Busty,
P.O. and P.S. Ranipool,
East Sikkim.
5. Shri Manhang Subba,
Son of Shri Bahadur Limboo
Resident of Tumlabong, Namli Busty,
P.O. and P.S. Ranipool,
East Sikkim.

...Petitioners

Versus

Shri Jashang Subba
Son of Shri Bahadur Limboo
Resident of Tumlabong, Namli Busty,
P.O. and P.S. Ranipool,
East Sikkim.

...Respondent

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, C.J.

For Petitioners : Mr. Zangpo Sherpa and Ms. Mon Maya Subba,
Advocates.

For Respondent : Mr. N. Rai, Senior Advocate.

Date of Hearing : 19.06.2020.

Date of Judgment : 26.06.2020.

JUDGMENT

Heard Mr. Zangpo Sherpa, learned counsel appearing for the petitioners and Mr. N. Rai, learned Senior Counsel appearing for the respondent.

2. This Revision Petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC") is filed challenging the impugned order dated 11.03.2019 passed by the learned District Judge, East Sikkim at Gangtok rejecting three applications – one by petitioner no. 1 (defendant no.1), another by petitioner no. 2 (defendant no.2) and the third one, which is a joint application by petitioner nos. 3, 4 and 5 (defendant nos.3, 4 and5), filed under Order VII Rule 11 read with Section 151 CPC.

3. At the very outset, it will be appropriate to note that Mr. Sherpa has relied on the application of petitioner no. 2, who is the father of petitioner nos. 1, 3, 4, 5 and the respondent.

4. The respondent (plaintiff) herein had filed the suit for declaration, recovery of possession, injunction and other consequential reliefs. The case of the plaintiff, as stated in the plaint, in short, is that according to the Survey Operation of 1979-80, plot nos. 212, 213, 216, 217, 218, 219 and 220 measuring 2.8666 Hectors at Tumlabong Block, Rumtek Circle at East Sikkim was recorded in the name of late Yakha Limboo, who is the grandfather of the plaintiff, being the father of defendant no.2. The aforesaid plots of land were mutated in the name of defendant no.2. The plaintiff came to learn that defendant no. 1, in connivance with defendant nos.2 to 5 had illegally obtained Parcha Khatian No. 105, bearing plot no. 216/474 measuring 0.0149 Hectors, which is the suit property, on the basis of Gift Deed dated 17.11.2017 and 27.11.2017. It is pleaded that the signature of the plaintiff in No Objection Certificate (NOC) dated 26.12.2017, which also

contained the signatures of defendant nos.3 to 5, was forged by defendant no.1 and though in that connection the plaintiff had lodged a First Information Report (FIR) before the Station House Officer, Ranipool Police Station, the same having not been registered, a private complaint was filed which was registered as Private Complaint Case No. 11/2018 in the Court of learned Judicial Magistrate, First Class, East Sikkim at Gangtok. Subsequently, in view of order dated 22.05.2018 passed by the learned Magistrate, Ranipool Police Station Case No. 21/18 was registered under Sections 420, 468, 471/34 IPC against defendant no.1 and her husband. On an application for mutation of the suit property being filed by defendant no.1 and a notice having been issued to the plaintiff, the plaintiff had lodged objection, whereupon the Sub-Divisional Magistrate by an order dated 05.05.2018 directed the parties to approach the Civil Court for redressal. It is also pleaded that defendant no.1 and her husband, being Government employees, though not entitled to any benefit under Chief Minister's Rural Housing Mission Scheme, which is meant for people who are homeless and who are below the poverty line, had obtained benefit.

5. The prayers made by the plaintiff read as follows:

- a. A decree for declaration declaring that the suit land is the ancestral property of the plaintiff.
- b. A decree for recovery of possession of the suit land.
- b. A decree for cancellation of the allotment of the house under the Chief Minister's Rural Housing Mission (CMRHM) Scheme in the name of the defendant No.1.
- c. Decree for De-registration of the Gift deed dated 17.12.2017 and 27.12.2017 from the name of Shanti Subba, Defendant No.1 and restore the same in the name of Defendant No.2.

- d. Decree for Demolition of the under construction house being illegally constructed upon the suit land.
- e. A decree declaring that the suit property is an unpartitioned ancestral property of the legal heirs of late Yakha Limboo.
- f. An order for ad-interim and temporary injunction in favour of the Plaintiff restraining the Defendants, their men, their agents and assigns from disturbing and interfering in peaceful possession and enjoyment of the suit land.
- g. A permanent injunction in terms of the prayer f. above.
- h. Cost of this suit and
- i. Any relief or reliefs as this Hon'ble Court may deem fit in the circumstances of the matter."

6. In the application of defendant no.2 under Order VII Rule 11 read with Section 151 CPC, it is stated that in the year 2017 he had decided to give a portion of land measuring "40/40" (0.0149 Hectors) out of plot no. 216 by way of gift to defendant no.1, as she was taking his care and that such decision was approved by defendant nos. 3, 4, 5 and the plaintiff. It is stated that the Gift Deed was duly registered on 27.11.2017 after following due process of law. It is stated that defendant no.2 being the father (karta) can make a gift of ancestral property to a reasonable extent in favour of daughter (defendant no.1) and the Gift Deed conveys only a small portion of ancestral property. It is stated that there was no partition of the ancestral property.

7. Order VII Rule 11 CPC reads as follows:

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

- (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 written 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;
- (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 for correcting the valuation or supplying 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."

8. It appears from the application filed by defendant no. 2 under Order VII Rule 11 CPC read with Section 151 CPC that prayer for rejection of the plaint was made on the grounds that there was no cause of action (Paragraph 14) and that the plaint is barred by law (Paragraph 15). Objections to the applications were filed by the plaintiff. In the objection to the application of defendant no.2, it was contended that the family is not a

Hindu Undivided Family and that the defendant no.1 had been given the creamy property.

9. Learned trial Court had held that the facts as mentioned by the defendants in their applications cannot be looked into while deciding an application under Order VII Rule 11 CPC, as the plaint and the documents filed along with the plaint are only to be looked into while considering such applications. The trial Court, on the basis of the pleadings in the plaint, held that there was cause of action. It was observed that whether defendant no.2 could gift a portion of his ancestral property only to his daughter is a question to be decided in the trial of the suit.

10. With regard to the other plea that the suit is barred by law, the learned trial Court observed that the defendants had not elaborated as to why the plaint is barred by law. It was, however, observed that the suit was filed well within the period of limitation. Accordingly, it was held that the plaintiff cannot be non-suited at the threshold and resultantly, the applications under Order VII Rule 11 read with Section 151 CPC were rejected.

11. Mr. Sherpa has submitted that in *Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others*, reported in (2018) 13 SCC 480, the Hon'ble Supreme Court had approved the decisions of Allahabad, Gujarat, Bombay and Jharkhand High Courts that the expression "law" finding place in Rule 11 (d) of Order VII CPC includes law declared by the Hon'ble Supreme Court. He has submitted that the gifted property constitutes a small percentage of total ancestral property and though the case of *R. Kuppayee and another vs. Raja Gounder*, reported in (2004) 1 SCC 295, was pressed into service to buttress the point that a father can make a gift of ancestral immovable property within reasonable limits in

favour of his daughter at the time of her marriage or even long after her marriage, the decision was not considered. Learned counsel submits that the suit property being a very small portion in comparison to the total ancestral property, in view of the law declared by the Hon'ble Supreme Court, the suit was clearly barred by law.

12. Placing reliance in the case of *Hanumantappa vs. Bhimawwa and another*, reported in *AIR 2006 Karnataka 148*, he submits that as the defendant no.2 had admitted the execution of the Gift Deed, there is no necessity of examination of attesting witnesses. It is submitted by him that question of cancellation of allotment of the house in the name of defendant no. 1 under the Chief Minister's Rural Housing Mission Scheme cannot be gone into in absence of necessary parties. He submits that averments made in the plaint do not disclose any cause of action also. Accordingly, it is contended by him that the impugned order cannot be sustained in law and the plaint is liable to be rejected.

13. Mr. N. Rai, learned Senior Counsel appearing for the respondent submits that while considering an application under Order VII Rule 11 CPC, the Court has to consider the averments made in the plaint and the documents relied upon in the plaint and the statements made and the factual matrix presented in the application under Order VII Rule 11 CPC cannot be looked into. In support of his submission, he has relied on *Bhau Ram vs. Janak Singh and others*, reported in *(2012) 8 SCC 701*, *P.V. Guru Raj Reddy and another vs. P. Neeradha Reddy and others*, reported in *(2015) 8 SCC 331* and *SNP Shipping Services Pvt. Ltd. and others vs. World Tanker Carrier Corporation and another*, reported in *AIR 2000 Bombay 34*.

14. He has further submitted that if there is any requirement of investigation to find out whether a suit is barred by law, there would be no scope for passing an order of rejection of plaint under Order VII Rule 11 (d)

CPC. In this connection he relied on a judgment in the case of *Madhyam Vargiya Grih Nirman Sahakari Sanstha vs. Vasant Rao and another*, reported in *AIR 1988 Madhya Pradesh 94*. He contends that the arguments advanced by Mr. Sherpa on the basis of the judgment in *R. Kuppayee and another* (supra) that the suit is barred by law is not tenable as the decision itself points out that reasonableness or otherwise of the gift made is a question of fact, which necessarily has to be decided in a trial. It is submitted by him that the defendant no.1 had forged his signature in the No Objection Certificate dated 26.12.2017. That apart, the plaintiff had also prayed for cancellation of the allotment of house in the name of defendant no.1 under the Chief Minister's Rural Housing Mission Scheme. He submits that it cannot be said that there is no cause of action for filing the suit. Mr. Rai submits that at the stage of consideration of an application under Order VII Rule 11 CPC, the Court cannot proceed to consider the merit of the case as projected in the plaint. He has contended that the learned trial Court was justified in rejecting the applications under Order VII Rule 11 CPC and therefore, no interference is called for with the aforesaid order in exercise of power under revisional jurisdiction.

15. During the course of his submissions Mr. Rai had also drawn the attention of the Court to Article 13 of the Constitution of India and Section 3 (29) of the General Clauses Act, 1897 explaining the meaning of the term "law" and "Indian Law", respectively.

16. Article 141 of the Constitution of India categorically states that the law declared by Supreme Court shall be binding on all courts within the territory of India. It cannot be said that the term "barred by any law" appearing in clause (d) of Rule 11 Order VII CPC means only law codified in legislative enactments and not the law laid down by the Hon'ble Supreme Court. After the decision of the Supreme Court in *Bhargavi Constructions*

(supra), the issue is no longer *res integra* and the expression "law" in clause (d) of Rule 11 Order VII CPC includes law declared by the Hon'ble Supreme Court.

17. In paragraph 5 of the judgment of *P.V. Guru Raj Reddy* (supra), the Hon'ble Supreme Court held as under:

"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

18. A perusal of the aforesaid extracted paragraph goes to show that rejection of the plaint under Order VII Rule 11 CPC is a drastic power conferred in the Court to terminate a civil action at the threshold. It is only if the averments in the plaint *ex facie* do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial. Averments in the plaint will have to be read as a whole and the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial.

19. The fundamental issue raised in the plaint is that the defendant no. 1 forged and fabricated the Gift Deed and that in the No Objection Certificate, the plaintiff's signature had been forged. The plaintiff had also questioned the allotment of house in the name of defendant no.1 under Chief Minister's Rural Housing Mission Scheme. At the time of consideration of application under Order VII Rule 11 CPC, the Court is not required to go into the question as to whether the suit suffers from the defect of non-joinder of a necessary party, a point raised by Mr. Sherpa. The averments made in the application under Order VII Rule 11 CPC read with Section 151 CPC by defendant no.2 that he executed the Gift Deed being the Karta cannot be taken into consideration at this stage. Reading the plaint as a whole, I am of the considered opinion that the plaint discloses a cause of action.

20. In *R. Kuppayee and another* (supra), the Hon'ble Supreme Court had held that a father can make a gift of ancestral immovable property within reasonable limits, keeping in view, the total extent of the property held by the family in favour of his daughter at the time of her marriage or even long after her marriage. The Hon'ble Supreme Court had observed that the question of reasonableness or otherwise of the gift made has to be assessed vis-à-vis the total value of the property held by the family as such a question is basically a question of fact. Answer to the question, inevitably, will depend on evidence on record. Viewed in that context, it cannot be concluded at this stage that the suit is barred in view of the decision in *R. Kuppayee and another* (supra).

21. In view of the above discussions, I am of the considered opinion that no interference is called for with the impugned order and accordingly, the revision petition is dismissed.

Chief Justice