

GAHC010015192024



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

Case No. : RFA/5/2024

SATYA RAM BARUAH AND 3 ORS
S/O LATE SURYAKANTA BARUAH,
RESIDENT OF VILLAGE GORAL, BHAKTABARI, PO BHATTAPARA, PS
AZARA, ASSAM, 781017

2: SRI PRADIP BARUAH
S/O LATE SURYAKANTA BARUAH

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

3: SRI MAHESH CHANDRA BARUAH
S/O LATE SURYAKANTA BARUAH

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

4: SMTI KAUSHALYA BAISHYA
W/O RAJAT BAISHYA
RESIDENT OF DHARAPUR
PO AND PS AZAR
DIST KAMRUP M ASSM 78101

VERSUS

PRANJAL BARUAH AND 10 ORS

S/O LATE KABINDRA BARUAH,
RESIDENT OF VILLAGE GORAL, BHAKTABARI, PO BHATTAPARA, PS
AZARA, ASSAM, 781017

2:SMTI NILIMA BARUAH
W/O LATE KABINDRA BARUAH

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

3:SMTI DIPA BARUAH MEDHI
W/O SRI SANTOSH MEDHI
RESIDENT OF VILLAGE AZARA
GODHULI BAZAR
PO AND PS AZARA
DIST KAMRUP M ASSAM 781017

4:SMTI KAKOLI BARUAH
W/O DIPU BARUAH

RESIDENT OF KHETRI STATION
PO AND PS KHETRI
DIST KAMRUP M ASSAM 782403

5:SMTI PUTULI BARUAH (DAS)
W/O LATE NABIN DAS
RESIDENT OF VILLAGE AZARA
GODHULI BAZAR
PO AND PS AZARA
DIST KAMRUP M ASSAM 781017

6:SMTI LAKHI BARUA (DAS)
W/O LATE GIRISH BARUA

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

7:SMTI SUNITA BARUAH
W/O SRI SANTOSH BARUAH

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

8:SMTI SHANTI BARUAH
W/O MANOMOHAN BARUAH
RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

9:SRI DHIRAJ BARUAH
S/O LATE KIRAN KUMAR BARUAH @ LATE KIRAN BARUAH AND LATE
LATIKA BARUAH

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

10:SRI RANTU BARUAH
S/O LATE KIRAN KUMAR BARUAH @ LATE KIRAN BARUAH AND LATE
LATIKA BARUAH

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
781017

11:SRI DHARMENDRA BARUAH
S/O LATE KIRAN KUMAR BARUAH @ LATE KIRAN BARUAH AND LATE
LATIKA BARUAH

RESIDENT OF VILLAGE GORAL
BHAKTABARI
PO BHATTAPARA
PS AZARA
ASSAM
78101

Advocate for the Petitioner : MR. M DAS

Advocate for the Respondent : MR. S K DEKA

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 13-03-2024

JUDGMENT & ORDER

This appeal is taken up for disposal at the admission stage taking into account that the plaint of the suit was rejected. No doubt, there are various parties in the instant appeal, but as the plaint was rejected at the behest of the defendant Nos.1 and 2 who are the respondent Nos.1 and 2 herein and the said respondent Nos.1 and 2 are duly represented by the learned senior counsel Mr. S Sarma, this Court have taken up the instant appeal for disposal at this stage.

2. This appeal has been filed against the order dated 20.11.2023 passed in Misc.(J).Case No.536/2023 in Title Suit No.211/2023, whereby the plaint in the said suit was rejected. Taking into account that rejection of the plaint amounts to a decree, the present regular first appeal has been preferred.

3. It is a trite principle of law that while adjudicating an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, the Code), the Court is only required to look into the averments of the plaint and the documents relied thereupon. Order VII Rule II stipulates six conditions when a plaint can be rejected: (1) where the plaint does not disclose a cause of action;

or (2) where the reliefs claimed are undervalued and the plaintiffs, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so; or (3) where the reliefs claimed are properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiffs, on being required by the Court to supply the requisite stamp paper within a time fixed by the Court, fails to do so; or (4) where the suit appears from the statement in the plaint to be barred by any law; or (5) where the plaint is not filed in duplicate; or (6) where the plaint fails to comply with the provisions of Rule 9 of Order VII.

4. The proviso which has been added to the said provision categorically mandates that the time fixed by the Court for correction of the valuation or supply 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 any exceptional nature for correcting the valuation or supplying the requisite stamp paper as may be within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff.

5. It is relevant to take note of that from the conditions when a plaint can be rejected enumerated i.e. the conditions No.2, 3, 5 and 6 permits the Court to pass appropriate orders thereby seeking compliance. It is only for non-compliance after being granted opportunity, the plaint can be rejected. (See Salem Advocate Bar Association, TN Vs. Union of India reported in (2003) 1 SCC 49, paragraph 16). However, as regards the condition No.1 and 4 i.e. where the plaint does not disclose a cause of action or where the suit appears from the statement of the plaint to be barred by law, the Court has no other option, but

to reject the plaint.

6. This Court also finds it very pertinent at this stage to observe that there is a fundamental difference between a plaint not disclosing a cause of action and there is no cause of action in the suit, *inasmuch as*, in respect to a case falling within the ambit of the plaint does not disclose a cause of action, the Court is required only to read the contents of the plaint along with the documents relied upon and nothing more, and from there the Court has to arrive at an opinion that the plaint on a meaningful reading does not disclose a cause of action. On the other hand, when the expression 'there is no cause of action in the suit' it means that after the entire trial of the suit, wherein evidence etc., are taken, the Court comes to an opinion that the plaintiff has failed to make out a case for the purpose of being entitled to the reliefs as sought for. {see Jogeshwari Devi Vs. Shatrughan Ram reported in (2007) 15 SCC 52}.

7. The fourth condition i.e. wherein a plaint could be rejected is when upon a reading of the statement of the plaint, it is seen that the suit is barred by any law. The same has to be only on a perusal of the plaint and nothing more. The said aspect is apparent from the use of the words, "where the suit appears from the statement of the plaint."

8. This court also finds it very relevant to observe that the rejection of a plaint amounts to nipping at the bud a civil proceeding and as such, the said being a drastic measure, it is the requirement of law that the conditions contained under Order VII Rule 11 are strictly complied with.

9. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in *Srihari Hanumandas Totala Vs. Hemant Vithal Kamat* reported in (2021) 9 SCC 99, wherein the Supreme Court at paragraph 25 dealt with the aspect pertaining to Order VII Rule 11 (d) and summarized that to reject the plaint on the ground that the suit is barred by any law, only the averments made in the plaint will have to be referred to. The Supreme Court further observed that the defence made by the defendant in the suit must not be considered while deciding the merits of the application.

10. In the case of *Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and Others*, reported in (2020) 7 SCC 366, the Supreme Court has dealt with the aspect pertaining to Order VII Rule 11 (a) and (d). It was observed that the underlying object of Order VII Rule 11 is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation, the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the shame litigation so that further judicial time is not wasted.

11. This Court also finds it very relevant to take note of the judgment of the Supreme Court in *T. Arivandandam v. T.V. Satyapal*, reported in (1977) 4 SCC 467, wherein the Supreme Court at paragraph 5 had duly observed that on a meaningful — not formal — reading of the plaint if it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the Code taking care to

see that the grounds mentioned therein is fulfilled.

12. In the backdrop of the above analysis of the settled principles, let this Court take note of the facts involved as disclosed in the plaint. From a perusal of the plaint, it reveals that Late. Lakhikanta Baruah and Late. Suryakanta Baruah were occupying a plot of land measuring 2 bighas covered by dag No.937 (new)/827 (old) of KP Patta No. 67(new)/204 (old) situated at Revenue Village Garal under Mouza Ramcharani within Azara Revenue Circle in the district of Kamrup, Assam as a tenant under one Dhrupad Chandra Baruah. The said land has been specifically described in Schedule A to the plaint. It has been alleged in the plaint that the name of Late Lakhikanta Baruah and Late. Suryakanta Baruah appeared in the draft chitha of 1957-64 as tenant (raiyat) under Dhrupad Chandra Baruah @ Dhrupad Baruah. Subsequently in the draft chitha prepared in the year 1975-85, the name of Late Lakhikanta Baruah only was shown as raiyat of the Schedule A land and accordingly a khatian bearing khatian No.74 was issued by the Government in the name of Late Lakhikanta Baruah. The said Lakhikanta Baruah was unmarried and after his death, all the right, title and interest and possession in respect of the Schedule A land as a raiyat devolved upon his brother Late Suryakanta Baruah. Late Suryakanta Baruah during his lifetime married twice. His first wife was one Nani Baruah and his second wife was one Basanti Baruah. The defendant Nos.1,2,3 and 4 are the successor-in-interest of one Late. Kabindra Baruah, who was one of the sons of Late. Suryakanta Baruah. The second son of Late. Suryakanta Baruah expired leaving behind his wife Smti Lakhi Baruah, who is the defendant No.6 in the suit. The plaintiff No.1, 2, 3 and 4 are the successor-in-interest of Late. Suryakanta Baruah through his second wife – Basanti Baruah.

13. It is further seen from the plaint that the landlord of Late. Suryakanta Baruah and Late. Lakhikanta Baruah i.e., one Dhrupad Chandra Baruah transferred the entire Schedule A land to one Kiran Kumar Baruah (since deceased). The proforma defendant Nos.7 to 12 are the successor-in-interest of Late. Kiran Kumar Baruah. Late Kiran Kumar Baruah during his lifetime, allowed the name of Late. Kabindra Baruah to be mutated in respect of 1 bigha of the Schedule A land which has been more specifically described in Schedule B. It is the claim made in the plaint that the plaintiff Nos.1, 2 and 3 and the defendant Nos.1, 2 and 6 are residing over the said Schedule B land. Taking into account that steps had been taken by the Principal defendants after the death of Late Kabindra Baruah to alienate the said Schedule-B land and to oust the plaintiff from the said land, the suit was filed seeking decree for declaration of joint right, title and interest and possession of the Plaintiffs over the Schedule B land along with the principal defendants as occupancy tenants; a decree for permanent injunction restraining the defendant, their men, agents, employee, servants from transferring and or forcefully dispossessing the plaintiffs from the Schedule B land and also from disturbing the peaceful possession of the Plaintiffs over the Schedule B land, etc.

14. In the backdrop of the above, let this Court now take into account the impugned order dated 20.11.2023. From a perusal of the impugned order it reveals that the learned trial court first dealt with as to what is a cause of action and opined that the cause of action appears to be the set of facts which justified for enforcement of a legal right for obtaining a relief in a law suit. It is on the basis of the said premises that the learned trial court proceeded to decide the

application under Order VII Rule 11 for rejection of the plaint. Thereupon, the learned trial court took into account the averments made in the plaint and opined that though the plaintiff claimed themselves as raiyat, but they failed to plead anything about payment of rent to the landlord Kiran Kumar Baruah, since the settled provisions of law of Assam Temporarily Settled Areas Tenancy Act, 1971 (for short, the Act of 1971) obliged the tenant/raiyat to pay rent to the landlord. The learned trial court further opined that Late Kiran Kumar Baruah allowed the predecessor of the defendant Nos.1 to 4 to mutate his name as a Raiyat in the Revenue records and from that the learned trial court inferred that the plaintiffs are admittedly not raiyat of the Schedule-B land. On the basis of the said observation, the learned trial court observed that the plaintiffs cannot claim any right of inheritance over the Schedule-B land.

15. The learned trial court further went ahead to opine that the plaintiff also failed to plead specifically the manner of acquiring right of occupancy tenant and the mutation entries of the defendant Nos. 1 to 4 over the Schedule B land was not challenged cleverly by the plaintiffs with an intent to avoid the specific bar of presenting a suit before the civil Court. The learned trial court further observed that if the raiyat died intestate, his legal heirs inherit the same, but if there is an inheritance of the property, there must be a plea on that or the record of right must be in the name of the plaintiffs. However, it was opined that as the plaintiff failed to make any specific plea regarding their right over the Schedule B land as occupancy tenant and the plaintiffs being the legal heirs of Late. Basanti Baruah, who is the second wife of Late. Suryakanta Baruah cannot inherit the suit land, since they cannot claim the right of inheritance over the suit land, after the land in dispute is mutated in the name of their step brother,

Late. Kabindra Baruah.

16. In addition to the above, the learned trial court observed that the plaintiffs in their plaint failed to present any specific plea regarding violation of their legal rights which may give them the right of suing the defendants for enforcement of their legal right. On the basis of the above, the learned trial court drew a presumption against the plaintiff that their suit suffers from lack of cause of action and the learned trial court did not find any justifiable reason upon which the matter may be put for trial, since there is no chance that the plaintiff may succeed at the end of the trial. It is on that basis that the learned trial court came to an opinion that the suit of the plaintiffs suffers from lack of cause of action and for which the Plaint is liable to be rejected.

17. The above observations and reasoning given by the learned trial court in the opinion of this Court is completely contrary to the well settled principle of law relating to rejection of the Plaint on the ground that the Plaint did not disclose a cause of action. From a perusal of the Plaint, it reveals that both the plaintiffs as well as the Principal defendants are the successor-in-interest of Late Suryakanta Baruah. The plaintiffs belong to branch of the second wife of Late Suryakanta Baruah, whereas the Principal Defendants belong to the branch of the first wife of Late Surya Kanta Baruah. The plaint discloses that Late Kabindra Baruah, the predecessor-in-interest of the Defendant Nos.1 to 4 duly acknowledged the rights of the plaintiffs and the plaintiffs alongwith the Defendant Nos.1, 2 and 6 reside in the Schedule B land. The dispute arose, as pleaded in the Plaint, only after the death of Late Kabindra Baruah, when the defendant Nos.1 to 4, as alleged were attempting to transfer the Schedule B

Land and dispossess the plaintiffs. The question, therefore, arises in the suit as to whether the Principal Defendants have exclusive rights over the schedule B Land irrespective of the Plaintiffs and the Defendants being successors-in-interest of Late Surya Kanta Baruah. This aspect, in the opinion of this Court can only be dealt with in trial and not in a proceeding under Order VII Rule 11 of the Code.

18. This Court further finds it relevant to observe that a perusal of the Act of 1971 though obligates the tenant to pay the fair rent to the landlord, but in the instant case, the claim made in the suit is that the Plaintiffs and the Principal Defendants are joint tenants and as such anyone of them exercising the tenancy rights and making payment of the fair rent would be payment of fair rent by all the joint tenants till such time the tenancy is severed as per law. Under such circumstances, the aspect of severance of the tenancy has to be proved. Therefore, the question of non-suiting the plaintiffs on the ground of not pleading that they paid the fair rent to the landlord, by rejecting of the plaint by the learned Trial court, in the opinion of this Court is erroneous and requires interference. It is further observed that the question of severance of tenancy is a question of fact which can only be decided in the trial.

19. This Court further finds it relevant to observe that when a tenancy under the Act of 1971 is created, the said tenancy as per Section 7 of the Act of 1971 is heritable. Under such circumstances, any right acquired upon Late Surya Kanta Baruah would devolve upon his legal heirs. Section 8 of the Act of 1971 permits the right of transfer by an occupancy tenant and this shall be subject to prior permission of the Government. Therefore, in the suit, it has to be decided

as to whether any right had devolved upon the Plaintiffs who also are the successor-in-interest. Merely because, the landlord permitted/allowed the name of Late Kabindra Baruah to be inserted in the record of rights would not dilute the provisions of Section 7 of the Act of 1971. This aspect of the matter is a subject to be decided in the trial on the basis of evidence.

20. In addition to the above, this Court further finds it relevant to take note of the judgment of the Supreme Court in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, reported in (2004) 9 SCC 512, wherein the Supreme Court categorically observed that so long the claim discloses some cause of action or raises some questions to be decided by a judge, the mere fact that the cause is weak and not likely to succeed is no ground for striking it out. Paragraphs 151 and 152 of the said judgment is reproduced hereunder:

151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In Vijai Pratap Singh v. Dukh Haran Nath Singh⁶² this Court held: (AIR pp. 943-44, para 9)

“By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the

claims made by him."

152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See Mohan Rawale)."

21. The above observations of the Supreme Court if read into the impugned order, it would be seen that the learned trial court contrary to the above law, rejected the plaint on the ground that there is no chance_of the plaintiffs succeeding in the trial which in the opinion of this Court was erroneous and requires interference.

22. Taking into account that the learned trial court has committed a gross illegality in rejecting the plaint, this Court therefore, sets aside the order dated 20.11.2023 passed in Misc.(J) Case No.536/2023. The plaint of Title Suit No.211/2023 is restored to file.

23. The parties before this Court are directed to appear before the learned trial court on 28.03.2024. On the said date, the learned trial court shall further proceed with the suit and the defendant Nos. 3 to 12 be issued fresh summons by the learned Trial court.

24. With the above observations and directions, the appeal stands allowed.

JUDGE

Comparing Assistant