



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

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

C. R. P. No. 03 of 2023

Rinzing Ongmu Bhutia,
W/o late Lha Dorjee Bhutia,
Opposite Vinayaka Mission Sikkim College of Nursing,
Near Petrol Pump,
Chandmari,
Gangtok-737101, East Sikkim.

..... Revisionist

Versus

1. Ms. Man Maya Tamang,
Below Hotel Demazong Road,
Near Padma Odzer Choling Secondary School,
Bhusuk Road, Chongey-737 103.
Gangtok, Sikkim.
2. The District Collector,
Office of the District Collector,
Sichey, Gangtok-737 101
East Sikkim.
3. Mr. Pejor Bhutia,
Son of Late Wong Dorjee Bhutia,
Below Hotel Demazong,
Bhusuk Road, Chongey – 737 103.
Gangtok, East Sikkim.

.....Respondent

***Revision Petition under Section 115 read with Section 151 of
the Civil Procedure Code, 1908.***

*Challenging the impugned order dated 31.10.2022 passed by the Court
of Learned District Judge, East Sikkim at Gangtok whereby the
application filed by the petitioner under Order VII Rule 11, read with
section 151 of the Civil Procedure Code, 1908 was rejected.*

Appearance:

Mr. Sangay Gyurmay Bhutia, Advocate for the Revisionist.
Ms. Kessang Deki Bhutia, Mr. Alex Basnet, Ms. Subaksha
Pradhan, Mr. Karma Ongchuk Lepcha, Advocates for the
Respondent No.1



Mr. Yadev Sharma, Government Advocate for the Respondent No. 2.

Mr. Jushan Lepcha, Advocate for Respondent no.3.

Date of hearing : 20.06.2023

Date of judgment : 27.06.2023

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. An Order dated 31.10.2022 passed by the learned District Judge, East Sikkim at Gangtok (learned District Judge) rejecting an application filed by the plaintiff under Order VII Rule 11 read with section 151 of the Civil Procedure Code, 1908 (CPC) to reject the counter claim of the defendant no.1 is under challenge.

2. The plaintiff has invoked the provisions of section 115 of the CPC. Interference under Section 115 is called for only if the court whose order is challenged has exercised a jurisdiction not vested in it by law; or has failed to exercise a jurisdiction so vested; or has acted in the exercise of its jurisdiction illegally or with material irregularity.

3. The counter claim filed by the defendant no.1 sought for the following reliefs:

“(a) a decree for declaring defendant no.3 has all right, title and interest over the suit Schedule-‘B’ land;

(b) a decree declaring that registered sale deed of suit land executed between plaintiff and



Defendant no.1 is null and void and same be cancelled.

- (c) Decree for confirmation of possession of the Defendant no.1 over schedule 'B' land,*
- (d) In alternative, a decree declaring that Defendant no.3 is liable to pay consideration value of land amounting to Rs.38,50,000/- (Rupees thirty eight lakhs fifty thousand) only or as per marked value of the suit land.*
- (e) A decree declaring that the undertaking and money receipt allegedly issued by father of the Defendant no.1 being forged one, same may be declared as null and void.*
- (f) A decree for permanent injunction restraining the plaintiff, her heirs, agents, successors, servants or any one claiming under them to entering into the suit Schedule-'B' land permanently;*
- (g) A decree in the form of precept to be issued to the Revenue authority particularly District Collectorate, East Sikkim for cancellation of mutation of the plaintiff in respect to the suit land and subsequent correction of the Revenue records;*
- (h) Costs of the suit;*
- (i) Any other relief or reliefs which the Plaintiffs are legally entitled to."*

4. Prayers (a) and (b) are for declarations. Prayer (c) is for confirmation of possession. Prayer (d) is an alternative prayer to prayer (c) for declaring the defendant no.3 liable to pay consideration value of the land. Prayer (e) is again a prayer for declaration based on allegation of forgery. Prayer (f) is a prayer for permanent injunction. Prayer (g) is for cancellation of mutation in favour of the plaintiff in respect of the suit land and correction of revenue records. Thus,



each of the prayers would have to be individually examined to conclude if the suit is barred by limitation.

5. In the detailed application under Order VII Rule 11 CPC filed by the plaintiff numerous factual averments have been made. However, the central argument of the plaintiff as also articulated by the learned counsel revolves around the averment made by the defendant no.1 in paragraph 49 and 50 of the counter claim.

6. According to the learned counsel for the plaintiff in paragraph 49, the defendant no.1 had candidly admitted that they had knowledge about the alleged transaction in the year 2014 itself pursuant to which late Amber Bahadur Tamang had lodged the complaint on 02.04.2014.

7. As per the plaintiff in paragraph 50 of the counter affidavit the defendant no.1 had wrongly stated that she had come to know about the alleged illegal transaction of the plaintiff only when Sub-Divisional Magistrate had issued a stay order dated 02.04.2016. The plaintiff claims that if the defendant had knowledge about registration of the suit property in the year 2014 itself then the counter claim for declaration and cancellation of sale deed ought to have been filed within three years from the date of the cause of action i.e. on or before 01.04.2017. However, the



counter claim was filed on 25.05.2022 more than eight years from the date of cause of action.

8. It is also the case of the plaintiff in the application that the defendant no.1 had made contradictory statements and not stated the entire true and correct facts. The plaintiff submits that the statements made in paragraph 50 of the counter claim of the defendant no.1 are incorrect. It is therefore, submitted that the limitation period for seeking a declarations and cancellation of sale deed would be governed by Article 58 and 59 of the Limitation Act, 1963 and both the Articles prescribed three years period of limitation from the cause of action.

9. The learned District Judge has opined that the counter claim filed by the defendant no.1 is well within limitation and rejected the application under Order VII Rule 11 CPC filed by the plaintiff.

10. Both before the learned District Judge as well as before this court it is the defendant no.1's case that prayer (c) would be covered by Article 65 of the Limitation Act, 1963 and not under Article 58 and 59. It is also argued that defendant no.1 had prayed for seven reliefs in the counter claim and not only the two reliefs' drawn attention to by the plaintiff. Accordingly, the learned District Judge held that the plaintiff's stand that the counter claim of the



defendant no.1 was time barred under Article 58 and 59 had no merits. The learned District Judge also found favour of the submission of the defendant no.1 that they had sought for cancellation of the undertaking and money receipt allegedly issued by the father of defendant no.1 on the ground that they were forged would be covered by section 17 of the Limitation Act, 1963 and therefore, the said prayer would be within the period of limitation.

11. A reading of the written statement and counter claim by the defendant no.1 makes it apparent that it was her case that the transaction of the suit property in the name of the plaintiff by defendant no.3 was done discretely and fraudulently without knowledge or consent of late Amber Bahadur Tamang and his family members and therefore, registration and mutation in the name of plaintiff is required to be cancelled as it was done illegally without permission of the real owner i.e. the father of defendant no.1 during his lifetime. It is the case of the defendant no.1 that the sale of the suit property and the mutation thereof was done by filing documents with alleged signatures of late Amber Bahadur Tamang which is however, not his. Further, it is the case of the defendant no.1 that 'no objection certificate' had not been obtained from her or the family members of late Amber Bahadur Tamang. The



defendant no.1 also clearly pleads that late Amber Bahadur Tamang and his family had no knowledge regarding registration of suit property in the name of the plaintiff and that they came to know about it only in the year 2016. According to defendant no.1 her father late Amber Bahadur Tamang never received Rs.3 lakhs from defendant no.3 and the documents furnished by the plaintiff allegedly signed by late Amber Bahadur Tamang are forged and manufactured documents.

12. It is settled law that the plaint must be read as a whole. With the above specific averments in the written statement the averment in paragraph 49 thereof does not make it apparent that the defendant no.1 had the requisite knowledge about the alleged forgery of her father's signature in the year 2014. This fact has been also explained in paragraph 50 where the defendant no.1 has again averred that she learnt about the illegal transaction of the plaintiff and the defendant no.3 only when the office of the Sub-Divisional Magistrate, East issued stay order bearing Memo No.07/DCE dated 02.04.2016.

13. In *C. Natrajan vs. Ashim Bai*¹ the Supreme Court held that an application for rejection of the plaint can be filed if the allegations made in the plaint, if given face value and

¹ (2007) 14 SCC 183



taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant, at this stage the court would not be entitled to consider the case of the defence. Applicability of one or the other provision of the Limitation Act, 1963 per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or other Article contained in the schedule appended to the Limitation Act, 1963.

14. In *Narne Rama Murthy vs. Rabula Somasundaram*² the Supreme Court held that when limitation is a pure question of law and from the pleadings itself it becomes apparent that the suit is barred by limitation, then, of course, it is a duty of the court to decide limitation at the outset even in the absence of a plea. However, in cases whether the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, and issue raised and then proved.

² (2005) 6 SCC 614



15. As seen above the clear case of the defendant no.1 in the written statement and the counter claim is that she was not aware of the forgery of her father's signature and the fraudulent sale deed until 2016. Thus, an averment to the effect in paragraph 49 that *"As per record, this fact came to the knowledge of the father of the defendant no.1 only in 2014 when the purchaser Ms. Nedup Doma Lachungpa handed copy of the parcha to verify the plot number and area from the concerned office and then immediately lodged complaint before the office of the SDM, East Sikkim on 02.04.2014 and the said case was registered as a Misc. Case No.66/DM/E/2014."* does not clearly reflect that the defendant no.1 had the knowledge about the forgery in the year 2014 as vehemently argued by the learned counsel for the plaintiff. This court is of the view that these facts averred by the defendant no.1 in the written statement and the counter claim must necessarily be tested during trial.

16. In ***P. Radha Bai vs. P. Ashok Kumar***³ relied upon by the learned counsel for the plaintiff the Supreme Court examined and contrasted the provision of section 17 of the Limitation Act and section 34 (3) of the Arbitration Act and in that context observed that section 17 does not

³ (2019) 13 SCC 445



encompass all kinds of frauds and mistakes. Section 17 (1) (b) and (d) only encompasses only those fraudulent conduct or act of concealment of documents which have the effect of suppressing the knowledge entitling a party to pursue its legal remedy. Once a party becomes aware of the antecedent facts necessary to pursue a legal proceeding the limitation period commences.

17. In paragraph 11 of **Saranpal Kaur Anand vs. Praduman Singh Chandhok**⁴ also referred to by the learned Counsel for the plaintiff the Supreme Court once again reiterated what was held in **P. Radha Bai** (supra).

18. As seen above from the written statement and the counter claim of the defendant no.1 it is apparent that her case was that she learnt about the alleged forgery of her father's signature in the documents relied upon by the plaintiff only in the year 2016.

19. Thus, the observation of the Supreme Court in paragraph 39 of **P. Radha Bai** (supra) and **Saranpal Kaur Anand** (supra) also does not further the case of the plaintiff.

20. A perusal of the impugned Order reflects that the learned District Judge has applied his judicial mind on the application made by the plaintiff. The learned District

⁴ (2022) 8 SCC 401



Judge has considered the issues raised by the plaintiff in the application under order VII Rule 11 of the CPC; the provisions of law; the rival submissions and pronounced the impugned Order. Thus it is clear that the present revision petition does not involve sub-clause (a) and (b) of section 115 CPC. Evidently, the learned District Judge has exercised jurisdiction vested in it by law and it has not failed to exercise the jurisdiction so vested. Therefore, the only question is whether the learned District Judge has acted in the exercise of its jurisdiction “illegally” or with “material irregularity”.

21. The impugned order passed by the learned District Judge could have been interfered with only if it had exercised its jurisdiction not vested in it by law or has failed to exercise its jurisdiction so vested or has acted in exercise of the jurisdiction illegally or with material irregularity. This court is also of the view that the learned District Judge has not acted in exercise of jurisdiction illegally or with material irregularity.

22. However, the observation of the learned District Judge that the counter claim filed by the defendant no.1 is well within limitation is set aside as it is felt that the issue of limitation raised by the plaintiff is a mixed question of fact and law which is required to be tried and tested during the



trial after framing the necessary issues. The impugned order stands modified to the above extent. This court however, does not find any error on the rejection of the application under Order VII Rule 11 of the CPC preferred by the plaintiff. The Civil Revision Petition No. 03 of 2023 is therefore, rejected. Pending application for stay is also rejected.

23. In the facts of the circumstances of the case no orders as to costs.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/