

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

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

C.R.P. No. 01 of 2024

Mrs. Dhan Kumari Pradhan,
Wife of Late Binay Kumar Pradhan,
Aged about 79 years,
Resident of Sichey, Sukha-Pool,
Gangtok District,
Sikkim- 737 101

..... Revisionist

Versus

1. Mr. Bigyan Pradhan,
Son of Late Surjyaman @ Suryaman Pradhan,
Resident of Rung-Dung, Mata Golai,
Rhenock, Pakyong District,
Sikkim-737 133.
2. Mrs. Neeru Pradhan,
Wife of Late Anup Pradhan,
Resident of Rung-Dung, Mata Golai,
Rhenock, Pakyong District,
Sikkim-737 133.
3. Mr. Arun Pradhan,
Son of Late Surjyaman @ Suryaman Pradhan,
Resident of Rung-Dung, Mata Golai,
Rhenock, Pakyong District,
Sikkim-737 133.
4. The Secretary,
Land Revenue Department,
Government of Sikkim, Gangtok-737 101.
5. The District Collector (Pakyong District),
Office of the District Collectorate,
Government of Sikkim, Pakyong-737 106.
6. Sub Divisional Magistrate (Rongli),
District Administrative Centre,
Rongli, Pakyong District-737 131.

7. Mr. Manish Pradhan,
Son of Late Ashok Kumar Pradhan,
Resident of Bhutia Busty, Darjeeling,
West Bengal-734 101.

..... Respondents

**Application under section 115 read with section 151 of
the Code of Civil Procedure, 1908.**

*(Impugned order dated 20.12.2023 passed by the learned Civil Judge,
Rongli, Sub-Division, Pakyong District, Sikkim rejecting the application
of the Revisionist under Order VII Rule 11 read with section 151 of the
Code of Civil Procedure, 1908 of the Revisionist for rejection of the
plaint in Title Suit No.01 of 2023).*

Appearance:

Mr. S. S. Hamal, Senior Advocate (Legal Aid Counsel)
with Mr. L. B. Gurung, Legal Aid Counsel, Mr.
Pradeep Sharma, Mr. Anirudh Gupta, Mr. Ram Devi
Chettri and Ms. Beneeta Gurung, Advocates for the
Revisionist.

Mr. Sushant Subba, Advocate for the Respondent Nos.
1 to 3.

Mr. S. K. Chettri, Government Advocate for the
Respondent Nos. 4 to 6.

None for the Respondent No. 7.

Date of hearing : 03.06.2024 & 04.06.2024
Date of Order : 04.06.2024

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. The present revision petition has been filed by the
defendant no.4 impugning an Order dated 20.12.2023
passed by the learned Civil Judge, Rongli Sub-Division,
Pakyong, Sikkim (the learned Civil Judge) rejecting an

application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) filed by the revisionist (defendant no.4) for rejecting the plaint on two grounds i.e. lack of cause of action and that the suit was barred by limitation. The learned Civil Judge rejected both the issues raised by the defendant no.4 and held that the plaint did disclose a cause of action and that the suit was not barred by limitation.

2. Title Suit No.01 of 2023 were filed by respondent nos. 1 to 3 (the plaintiffs) against the Secretary, Land Revenue Department, District Collector, Pakyong, Sub-Divisional Magistrate, Rongli, Pakyong, the defendant no.4 and respondent no.7 (defendant no.5). The suit was styled as a suit for declaration, recovery of possession, cancellation of documents, injunction and other consequential reliefs.

3. It was the case of the plaintiffs that they along with defendant no.5 are the legal heirs of late Surjyaman Pradhan @ Suryaman Pradhan (Surjyaman Pradhan) and late Damyanti Pradhan and that the defendant no.4 is the legal heir of late Surjyaman Pradhan and late Padma Kumari Pradhan. According to the plaint late Surjyaman Pradhan had two wives in his lifetime i.e. late Padma Kumari Pradhan and late Damyanti Pradhan and both were

sisters and legal/biological daughters of late Rai Sahab Ratna Bahadur Pradhan.

4. It was pleaded that late Surjyaman Pradhan did not inherit any ancestral property from his paternal lineage and only plots of lands inherited by the present legal heirs of late Surjyaman Pradhan are the plots of lands gifted by late Rai Sahab Ratna Bahadur to his two daughters i.e. late Padma Kumari Pradhan and late Damyanti Pradhan.

5. According to the plaintiffs in the year 1995 the entire plots of land recorded under *Parcha Khatiyan* No.54 which were gifted by late Rai Sahab Ratna Bahadur Pradhan to his two daughters were mutated in the name of her son late Binay Kumar Pradhan vide *Parcha Khatiyan* No.89 as all the sons of late Damyanti Pradhan were minor but it was promised by late Padma Kumari Pradhan that once the sons of late Damyanti Pradhan attained the age of majority the said plots of land shall be equally distributed between the sons of late Padma Kumari Pradhan and late Damyanti Pradhan.

6. Paragraph nos. 07 to 13 and 17 of the plaint are relevant to the present issue and therefore extracted verbatim below.

“7. *That Late Binay Kumar Pradhan husband of defendant no.4 died on 28.04.1988 and after his demise the plaintiff defendant no.4 and father of defendant no.5*

jointly became the legal, rightful and actual owner of Khatiyon No.90/204 bearing plot nos. 408, 700, 702, 843, 844, 845, 849 and 868, measuring an area of 1.5640, 0.8920, 0.0880, 2.0520, 0.8600, 0.0860, 0.2560 and 1.1040 Hectares, situated at Rhenock Block, Rongli Mahkuma, Pakyong District of Sikkim. The said plots of land are more fully described in the Schedule below and are hereafter referred to as "suit property" for the present suit. (An acceptance/acknowledgement letter of defendant no.4 dated 02.04.1986 is annexed hereto and marked as Annexure-2).

8. *That accordingly, the suit property was mutated in the joint name of Plaintiffs, defendant no.4 and father of defendant no.5 vide O.O. No.8547/SDM (R) dated 13.08.1997 (A parcha Khatiyon and map of the suit property in the joint names of the legal heirs and search report vide Memo No. 200/SDM/R/E, dated 04.05.2022 are annexed hereto and marked as Annexure-3 Annexure-4 and Annexure-5 respectively).*

9. *That however, during the digitization of land records, the suit property was found to be only recorded in the names of Late Ashok Pradhan, son of Late Surjyaman @ Suryaman Pradhan (father of defendant no.5) and Smt. Dhan Kumari Pradhan, wife of Late Binoy Kumar Pradhan (defendant No.4). (A certified copy of computerized parcha of suit property is annexed hereto and marked as Annexure-6).*

10. *That the names of the Plaintiff were wrongfully, illegally and without adherence to the legal procedure were removed from the land record of the abovementioned properties during the digitization of land records by the defendant No.1, 2 and 3.*

11. *That the suit property is an unpartitioned ancestral property of the plaintiffs, defendant no.4 and father of defendant no.5. The defendant nos. 1, 2 and 3 has no right to delete the names of the plaintiffs from the computerized records of rights without first obtaining the NOC of the other coparceners i.e. Plaintiffs.*

12. *That when the son of the plaintiff no.3 viz. Shri Nishek Pradhan filed an RTI application under Right to Information Act, 2005 with the office of defendant no.3, it is pertinent to mention that R.O. cum Assistant Director, Sub-Divisional Office, Rongli, Pakyong District of Sikkim gave a reply to the said RTI application stating that conceivably the name of the Plaintiffs have missed out inadvertently during the process of digitization of land record. (A RTI reply from R.O. cum Assistant Director, Sub-Divisional Office, Rongli, Pakyong District of Sikkim vide Memo No.188/SDM/R/E, dated 05.05.2022 is annexed hereto and marked a Annexure-7).*

13. *That based on the alleged computerized parcha, the defendant No.4 had applied for transfer of the suit property from the joint name of herself and that of late*

Ashok Kumar Pradhan to her sole name by obtaining the no objection certificate from defendant no.5 and the alleged mutation process was started by the office of defendant no.3 vide application No.130104197 dated 17.02.2021.

.....”

“17. *That the cause of action for this suit first arose on 05.04.2016 when the defendants illegally deleted the names of the Plaintiffs during the process of digitization of land record. The cause of action further arose on 17.02.2021 when the defendant no.4 applied for mutation of the suit property in her sole name after obtaining the NOC from defendant no.5. The cause of action again arose on 20.09.2022 when the defendant no.3 passed an order, directing the Plaintiffs to approach higher court. The cause of action again arose on 03.01.2023 when the Plaintiff had sent a legal notice under section 80 of Code of Civil Procedure, 1908 to the defendant nos. 1, 2 and 3 seeking relieves for the Plaintiffs in respect of the matters related to the suit land and the said defendants failed to comply with it. The cause of action lastly arose and from 19.03.2023 when the statutory period of two months given in the legal notice issued by the Plaintiffs expired. All the aforementioned cause of action continue to exist till date under the territorial jurisdiction of this Hon’ble Court.”*

7. The plaintiffs therefore, prayed for the following reliefs:-

“a. *A decree declaring that the suit property is the unpartitioned ancestral property and that its title is jointly held by the Plaintiffs, defendant no.4 and father of defendant no.5.*

b. *A decree declaring that the deletion of the Plaintiffs name by the defendant No.1 to 3 during the process of digitization of land record to be wrong and illegal.*

c. *A decree declaring the insertion of the name of defendant no.4 and father of defendant no.5 only in the record of right to be null and void and restore the suit property to its original joint names i.e. the name of the Plaintiffs, defendant no.4 and father of defendant no.5.*

d. *A decree cancelling the computerized records of right dated 05.04.2016, where the suit property is illegally recorded in the name of defendant no.4 and father of defendant no.4 being illegal and void-ab-initio.*

e. *A decree cancelling/deregistering all the illegal mutations/transfers of the suit property in favour of any persons, after the names of the Plaintiffs were illegally removed from the land records during the process of digitization of land record.*

f. *An Order of injunction against the defendant no.4 from transferring, alienating, encumbering, interfering with or disposing of any of the suit property and against commencing any construction on the suit property.*

g. *A decree for correction of the computerized records of rights of the suit property as per the office order No.8574/SDOP, dated 13.08.1997.*

h. *A decree awarding compensation for the harassment meted out by the defendants to the Plaintiffs by not restoring the suit property in the joint names, even after repeated requests and representations; and*

i. *Any other relief and reliefs for which the Plaintiffs are entitled to.”*

8. Heard Mr. S. S. Hamal learned Senior Counsel for the defendant no.4 as well as Mr. Sushant Subba, learned counsel for the plaintiffs. The learned Senior Counsel relied upon the judgment of the Supreme Court in **C.S. Ramaswamy vs. V. K. Senthil & Ors.**¹ in this case the Supreme Court on examining the plaint opined that most of the cause of actions alleged are much prior to/prior to the execution of the registered sale deeds and even the averments and allegations with respect to knowledge of the plaintiffs averred in paragraph 19 thereof can be said to be too vague. It was also held that nothing has been mentioned on which date and how the plaintiffs had the knowledge that the document was obtained by fraud and/or misrepresentation. It was also found that the averments and allegations in the plaint with respect to fraud are not

¹ AIR 2022 SC 4724

supported by any further averments and allegations how the fraud has been committed.

9. In such situations the Supreme Court opined that:

“7.8 Therefore, even if the submission on behalf of the respondents – original plaintiffs that only the averments and allegations in the plaints are required to be considered at the time of deciding the application under Order VII Rule 11 CPC is accepted, in that case also by such vague allegations with respect to the date of knowledge, the plaintiffs cannot be permitted to challenge the documents after a period of 10 years. By such a clever drafting and using the word “fraud”, the plaintiffs have tried to bring the suits within the period of limitation invoking Section 17 of the limitation Act. The plaintiffs cannot be permitted to bring the suit within the period of limitation by clever drafting, which otherwise is barred by limitation.”

10. The learned Senior Counsel for the defendant no.4 does not agitate the issue of lack of cause of action as there are sufficient pleadings which does reflect that the plaintiffs may have a cause of action. However, the learned Senior Counsel insist that due to the pleadings in the plaint and particularly paragraph 17 where the plaintiffs have made a categorical statement that the cause of action for the suit first arose on 05.04.2016 when the defendants illegally deleted the name of the plaintiffs during the process of digitization of land records it must be held that the suit was barred by limitation and rejected under Order VII Rule 11 (d) of the CPC.

11. It is now well settled that the plaint must be read as a whole in a meaningful and purposeful manner. On the plaint being so read, it does give an impression that it is the plaintiffs case that the suit property was mutated in the joint name of the plaintiffs the defendant no.4 and the defendant no.5 in the year 1997 but however, during the process of digitization of the land records the suit property was found to be recorded in the name of the late Ashok Pradhan, son of late Surjyaman Pradhan (father of defendant no.5) and Smt. Dhan Kumari Pradhan wife of late Binoy Kumar Pradhan. What is also decipherable is that the plaintiff no.3 may have learned about the deletion of their names only when he received the information on 05.05.2022. What has been mentioned in paragraph 17 is the date on which the plaintiffs allege that the defendants had illegally deleted their names during the process of digitization of land records.

12. The prayers in the plaint are either for declaration or cancellation of the mutation records. To obtain such a declaration the period of limitation provided under the Limitation Act 1963 is 3 years when the right to sue first accrues. Right to sue would first accrue only when the plaintiff learned about the deletion of their names from the revenue records on receipt of the RTI information vide reply dated 05.05.2022 and therefore, the suit which was

filed on 15.05.2023 would be within time. On a meaningful and not formal reading of the plaint in its entirety this Court is of the view that the learned Civil Court had correctly rejected the application under Order VII Rule 11 of the CPC as this is not a case in which an impression can be gathered that it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue. It is also not a case of clever drafting trying to bring the suit within the period of limitation or creating an illusory cause of action or mischievous. It is apparent that the plaintiffs may have grievance and therefore, the suit must be tested during trial and all issues raised by the parties must be tried including the issue of limitation. It is not a case where the suit appears from the statement in the plaint to be barred by the law of limitation. The lack of clarity in the pleadings about the date of knowledge may be tested during trial after issues are framed.

13. The impugned order to that extent is modified leaving all questions of facts and law open to be tested during trial. The observations made herein is only for the purpose of disposal of the present revision petition.

14. The revision petition is accordingly disposed.
Pending interim application also stands disposed.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**

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