

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

WP (C) No. 44 of 2020

1. Shri Roshan Giri
Aged about 39 years,
Son of Late Tika Ram Giri,
Resident of Lower Arithang,
P.O. & P.S. Gangtok,
East Sikkim.

2. Shri Rajiv Giri,
Aged about 34 years,
Son of Late Tika Ram Giri,
Resident of Lower Arithang,
P.O. & P.S. Gangtok,
East Sikkim.

...PETITIONERS

Versus

1. Shri Rakesh Gurung,
Son of Late Nar Prasad Gurung,
Aged about 43 years,
Resident of Lower Arithang,
P.O. & P.S. Gangtok,
East Sikkim, PIN:737101.

Represented by:
Smt. Laxmi Chakraborty,
Constituted Attorney,
Resident of Lower Arithang,
P.O. and P.S. Gangtok.
East Sikkim, PIN:737101.

2. The Gangtok Municipal Corporation,
Through its Commissioner,
Near Deorali, East Sikkim,
PIN-737102.

...RESPONDENTS

BEFORE

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

For petitioners : Mr. N. Raj, Senior Advocate, with Ms. Sushmita Gurung, Advocate.

Date of hearing & judgment : 11.12.2020

JUDGMENT (ORAL)

(*ARUP KUMAR GOSWAMI, CJ*)

This petition under Article 227 of the Constitution of India is filed against the order dated 24.10.2020, passed by the learned Civil Judge, East Sikkim at Gangtok, in Title Suit No.25 of 2018, rejecting an application under Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908, for short, the CPC, for framing of an additional issue.

2. It is to be noted that by the aforesaid order dated 24.10.2020, the learned trial court had also rejected the counter-claim filed by the petitioners and the petitioners had filed another petition under Article 227 of the Constitution of India, which is registered as WP (C) No. 43 of 2020. By an order passed today, the said petition was dismissed.

3. Mr. N. Rai, learned Senior Counsel for the petitioners has submitted that though additional issue sought to be raised in the application under Order 14 Rule 5 read with Section 151 CPC was in reference to the counter-claim filed, the said additional issue can still be framed for resolving the disputes in between the parties and in that view of the matter, the learned trial Court committed illegality in rejecting the said application.

4. The petitioners are defendant nos.2 and 3 in the suit filed by the respondent no.1 for declaration, recovery of possession, injunction and other consequential reliefs. Defendant no.1 in the suit is Gangtok Municipal Corporation through its Commissioner and defendant no.1 is arrayed as respondent no.2 in the petition.

5. The petitioners had filed written statement on 17.04.2019. The plaintiff had filed an application under Order 6 Rule 17 read with Section 151 of the CPC and same was allowed by the learned trial court. The plaintiff had filed

amended plaint on 06.02.2020. The written statement to the amended plaint was filed by the present petitioners on 18.02.2020.

6. Five issues were framed on 29.06.2020. The petitioners, on 07.09.2020, had filed the counter-claim and the application under Order 14 Rule 5 read with Section 151 CPC praying for framing of an additional issue to the following effect:

"6. Whether the plaintiff is liable to return the timber and other construction materials of Defendant Nos.2 and 3 stored in a kutcha shed constructed by them in the vacant land of the plaintiff with his verbal permission or in the alternative pay the damages amount in favour of Defendant No.2 and 3."

7. It is stated that on the date of framing of issue it was brought to the notice of the learned trial court by the learned counsel for the petitioner that an important issue arising out of the averments made in paragraph 26 of the amended written statement was inadvertently not included in the suggested issues. It is also stated that the learned trial court suggested to the learned counsel for the petitioner to file an application to frame the suggested issue.

8. Assuming that the statements made above are correct, no additional issue was sought to be framed on the basis of the averments made in paragraph 26 of the amended written statement, but prayer was made to frame an additional issue in view of filing of the counter-claim. Submission of Mr. Rai that even after rejection of the counter-claim, the suggested issue can still be framed is without any merit as the issue suggested is directly connected to the prayer made in the counter-claim.

9. When the order of rejection of counter-claim is upheld by this court in WP(C) No. 43 of 2020, framing of an additional issue in the light of the counter-claim, as prayed for, does not arise.

10. In view of the above discussion, the petition is dismissed.

(Chief Justice)