

W.P. (C) No.48 of 2021
Kharka Singh Chettri vs. Mangal Chandra Rai & Ors.
With
W.P. (C) No. 49 of 2021
Man Bahadur Chettri vs. Mangal Chand Rai & Ors.

Mr. Nirmal Kumar Berdewa, Advocate for the Respondent Nos. 1 to 4.

Dr. Doma T. Bhutia, Additional Advocate General and Mr. Shakil Raj Karki, Assistant Government Advocate for the State-respondent Nos.5 to 7.

Date of hearing : 02.09.2022

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. These applications under Section 227 of the Constitution of India invoking the supervisory jurisdiction of this court assails two Orders both dated 17.11.2021 deciding two applications under Order XIV Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) to amend the issues framed by the learned Trial Court on 22.09.2021 in two suits i.e. Title Suit No. 03 of 2020 (***Mangal Chandra Rai & Ors. Vs. Kharka Chettri & Ors***) and Title Suit No.02 of 2020 (***Mangal Chandra Rai & Ors. Vs. Man Bahadur Chettri & Ors.***) pending before the learned Civil Judge, West Sikkim at Soreng.

2. By Orders dated 22.09.2021 the learned Trial Court had framed issues in both the suits.

3. The petitioners who were defendant no.1 in both the suits filed applications under order XIV Rule 5 read with Section 151 CPC for rectifications including the striking out of issue no.5 and issue no.7 in the respective suits. Issue

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no. 5 (in Title Suit No. 03 of 2020) and issue no.7 (in Title Suit No.02 of 2020) which were identically worded read as under:

“Whether the suit property was sold to meet legal necessity of the joint family of the plaintiffs. (onus on the defendants).”

4. Although the learned Trial Court rectified the other errors pointed out in the applications it was of the view that issue no.5 (in Title Suit No. 03 of 2020) and issue no.7 (in Title Suit No. 02 of 2020) need not be struck off as in its opinion if the suit property was found to be ancestral property then it may be necessary for the defendants to show that it was sold out of legal necessity. This view of the learned Trial Court was in spite of noting that there were no pleadings that the property was sold out of legal necessity.

5. The learned Trial Court thus seems to have framed issue no.5 and 7 as above without necessary pleadings. The approach of the learned Trial Court in holding that if the suit property are found to be ancestral property then it may be necessary for the defendants to show that it was sold out of legal necessity is incorrect. It is fundamental that issues are framed when material preposition of fact or law is affirmed by one party and denied by the other. Issues

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are required to be framed with regard to only those pleadings which are asserted by one party and denied by other. The learned Trial Court has categorically held that there is no pleading or denial of legal necessity. If that be so then the issue of legal necessity was not necessary.

6. In *Ponnayal alias Lakshmi vs. Karuppannan*¹ the Supreme Court held that “*Civil Suits are decided on the basis of pleadings and the issues framed and the parties to the suit cannot be permitted to travel beyond the pleadings.*”

7. Thus, the impugned Orders dated 17.11.2021 relating to issue no. 5 and issue no.7 have incorrectly decided the applications for amending/striking out the issues and accordingly set aside to the above extent.

8. During the arguments the relevant pleadings in the two suits were pointed out by the learned counsel for the parties. In paragraph 11 of the plaint (in Title Suit No.03 of 2020) it was asserted by the plaintiff that:-

“11. *That through above report it further came to light that the Defendant No.1 fraudulently and surreptitiously transferred and mutated (i) portion of land measuring an area of 0.03500 Hectare from the Plot No.243 and (ii) a portion of land measuring an area of 0.1160 Hectare from Plot No.250 in his name from the name of their Late grandfather with the aid of Defendant No.4.”*

¹ (2019) 11 SCC 800

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9. Paragraph 21 of the written statement contested the plea of the plaintiff in the following manner in Title Suit No.03 of 2020:

“21. That the contents of paragraphs 10 and 11 of the plaint are denied. It is denied that only on the perusal of the documents marked Annexures IV to VII in the plaint the plaintiffs came to know the actual status of the landed properties of their late grand-father under Khatiyan No.72 bearing Plot Nos. 242, 243 and 250 situated under Chuchen Block, Mangalbaria Revenue Circle, West Sikkim. It is reiterated that the plaintiffs were fully aware of the sale of the suit lands made by their father identifying as Late Bishnu Bahadur Rai and the mutations of the suit lands in favour of the answering defendant. It is further denied that the answering defendant fraudulently and surreptitiously transferred and mutated a portion of land measuring an area of 0.3500 Hectare from Plot Nos. 243 and a portion of land measuring an area of 0.1160 Hectare from Plot No.250 in his name from the name of Late Bishnu Bahadur Rai. The original sale deed validly executed and registered, computerized parcha indicating the answering defendant’s ownership over the suit land along with other relevant documents submitted with the written statements clearly establish that there was lawful and valid transfer of the suit lands in favour of the answering defendant. It is admitted that after the valid and lawful mutation of the suit lands in favour of the answering defendant the new plot numbers were generated by the Office of the Defendant No.4.”

10. In view of the pleadings at paragraph 11 of the plaint and paragraph 21 of the written statement it would be necessary to frame the following issue in Title Suit No.03 of 2020:-

Whether the defendant no.1 had fraudulently and surreptitiously transferred and mutated (i) portion of land measuring an area of 0.3500 Hectares from plot no.243 and (ii) a portion of land measuring an area of 0.1160 Hectares from

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plot no.250 in his name from the name of their late grand-father with the aid of defendant no.4? (onus on the plaintiff).

11. In paragraph 10 of the plaint (in Title Suit No. 02 of 2020) the plaintiff had averred:-

“10. That through above report it further came to light that the Defendant No.1. fraudulently and surreptitiously transferred and mutated Plot No.242 measuring an area of 0.2700 Hectare, (ii) portion of land measuring an area of 0.0560, 0.0360, and 0.0660 from total measuring of land 0.8580 Hectare from the Plot No.243 and (iii) a portion of land measuring an area of 0.0980 Hectare from Plot No.250 in his name from the name of their Late grand-father with the aid of Defendant No.4.”

12. In the written statement paragraph 10 of the plaint was responded to in the following manner:

“23. That the contents of paragraphs 9 and 10 of the plaint are denied. It is denied that only on the perusal of the documents marked Annexures IV to VII in the plaint the plaintiffs came to know the actual status of the landed properties of their late grand-father under Khatiyan No.72 bearing Plot Nos. 242, 243 and 250 situated under Chuchen Block, Mangalbaria Revenue Circle, West Sikkim. It is reiterated that the plaintiffs were fully aware of the sale of the suit lands made by their father identifying himself as Late Bishnu Bahadur Rai and the mutation of the suit lands in favour of the answering defendant. It is further denied that the answering defendant fraudulently and surreptitiously transferred and mutated Plot Nos. 242, portions of land from 243 and portion of land from Plot No. 250 in his name from the name of Late Bishnu Bahadur Rai. The averments made in paragraphs 17, 18 and 19 of the Written Statements (supra) clearly establish the lawful and valid transfer of the suit lands in favour of the answering defendant. It is admitted that after the valid and lawful mutation of the suit lands in favour of the answering defendant the new plot numbers were generated and new Parcha Khatiyan was issued to the answering defendant by the Office of the Defendant No.4.”

13. In view of the above pleadings it is necessary that the following issue be framed in Title Suit No. 02 of 2020:-

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Whether the defendant no.1 fraudulently and surreptitiously transferred and mutated plot no.242 measuring an area of 0.2700 hectares, portions of land measuring of 0.0560, 0.0360 and 0.0660 from plot no.243 and a portion of land measuring 0.0980 hectare from plot no.250 in his name from the name of the plaintiff's grandfather with the help of defendant no.4. (onus on the plaintiff).

14. The applications under Article 227 of the Constitution of India are allowed. The impugned Orders both dated 17.11.2021 are modified to the above extent. The learned Trial Court shall frame the necessary issue as directed above and proceed with the trial.

**(Bhaskar Raj Pradhan)
Judge**

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