

(2008) 02 GAU CK 0009

Gauhati High Court

Case No: None

Raghubir Prasad Agarwal

APPELLANT

Vs

Ravi Kumar Sureka and Another

RESPONDENT

Date of Decision: Feb. 12, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10, 151

Citation: (2008) 4 GLT 654

Hon'ble Judges: Brojendra Prasad Katakey, J

Bench: Single Bench

Final Decision: Allowed

Judgement

B.P. Katakey, J.

The defendant in Title Suit No. 16/2001, by the present petition, is challenging the order dated 29.08.2005 passed by the learned Civil Judge (Jr. Division), No. 1, Tinsukia (now Munsiff No. 1) refusing to stay further proceeding in the said suit by rejecting the application filed u/s 10 of the CPC by holding that the matter in issue in Title Suit No. 16/2001 and in Title Suit No. 15/2001 is not directly and substantially the same and the plaintiffs in both the suits are different.

2. The present opposite parties instituted Title Suit No. 16/2001 against the present petitioner in the Court of the learned Civil Judge (Jr. Division), No. 1 at Tinsukia praying for his ejection from suit premises and delivery of khass possession and also for recovery of arrear rent contending inter alia that the premises in which the petitioner has been carrying on his business originally owned by M/s Ramesh Chandra Chakraborty Trust Estate and the petitioner came to occupy the same as tenant under the said Trust, agreeing, amongst other, to pay rent @ Rs. 600/- per month according to English calendar, payable at the expiry of each month of tenancy; to keep the premises in good and habitable condition; not to sublet the same or any part thereof and to handover vacant possession thereof whenever he

would be asked to do so by the landlord. It has further been contended that by a registered deed dated 02.07.2000 the said Trust created a 99 years lease in respect of certain properties including the suit premises in favour of the opposite parties/plaintiffs and handed over the possession of the suit properties to the plaintiffs and authorized them to use and utilize the same in any manner they like and, thereafter, the petitioner/defendant was informed about the execution of the lease deed by the opposite parties/plaintiffs asking him to at torn to the plaintiffs and similar letter was also sent by the Trust but in spite of that the petitioner/defendant neither pay any rent nor make any new agreement with the plaintiffs in respect of the suit premises since the month of July, 2000 in spite of the demand. The opposite parties/plaintiffs also instituted the said suit on the ground of bona fide requirement. The petitioner, on receipt of the summons, entered appearance and filed written statement admitting that he is occupying the suit premises as tenant under the Trust but denied the due date of payment as alleged in the plaint. The defendant/ petitioner also denied the execution of any lease deed by the trust in favour of the plaintiffs/opposite parties and has pleaded that in the month of March, 2001, the said Trust with its then President and Secretary instituted a suit being Title Suit No. 15/2001 in the Court of the learned Civil Judge (Sr. Division), Tinsukia against the opposite parties/plaintiffs praying for cancellation of the lease deed dated 02.07.2000 as well as for declaration that the order of mutation of Holding No. 2597 of Ward No. 11 (of which the suit premises is apart) passed on 05.07.2000 is illegal. The petitioner/defendant also contended in the written statement that there is no relationship of landlord and the tenant between him and the opposite parties and he is a tenant under the Trust.

3. Title Suit No. 15/2001 has been filed by M/s. Ramesh Chandra Chakraborty Trust Estate and by its President and Secretary, namely Sri Gauranga Ch. Chakraborty and Sri Nityananda Chakraborty respectively, against Sri Ravi Kr. Sureka and Sri Vinit Kr. Sureka (present opposite parties) and Sri Keshab Chakraborty, as main defendants and against M/s Friend and Company (Dibrugarh) Pvt. Ltd., M/s. New Friend and Company as well as against Sri Raghubir Prasad Agarwal (the present petitioner) as proforma defendants for declaration and cancellation of the lease deed dated 02.07.2000, for issuance of precept and for recovery of khass possession and also for permanent injunction mainly contending that Sri Keshab Chakraborty, who at one point of time was a Secretary of the Trust, had no authority to execute a registered deed of lease on 02.07.2000 in favour of Sri Ravi Kr. Sureka and Sri Vinit Kr. Sureka (opposite parties in the present petition) as he was removed from the post of Secretary of the Trust vide resolution dated 18.04.1999 and as such from that date he had no authority to act as the Secretary of the Trust.

4. The present petitioner, thereafter, in the year 2005 filed an application u/s 10 of the CPC praying for stay of the further proceeding in Title Suit No. 16/2001 contending that the vital and substantial issue relating to the relationship of landlord and the tenant between the opposite parties and the petitioner is in issue

in a earlier instituted Suit being Title Suit No. 15/2001 where the present opposite parties are the defendant Nos. 2 and 3 and the present petitioner is the proforma defendant No. 6. The present opposite parties filed their objection to the said application praying for stay of the further proceeding of the suit by contending that the ingredients of Section 10 CPC are not present. The learned Court below, thereafter, upon hearing the learned Counsel for the parties rejected the said application filed by the present petitioner/defendant.

5. I have heard Mr. T.C. Khatri, the learned Sr. Counsel for the petitioner as well as Mr. G.N. Sahewalla, the learned Sr. Counsel appearing on behalf of the opposite parties.

6. Mr. Khatri, the learned Sr. Counsel for the petitioner referring to the averments made in the complaints in Title Suit No. 15/2001 as well as in Title Suit No. 16/2001, which are pending in the Court of the learned Civil Judge (Sr. Division) at Tinsukia and in the Court of the learned Civil Judge (Jr. Division), No. 1, Tinsukia (now Munsiff), respectively, has submitted that the very basis on which the present opposite parties claimed to be the landlord of the suit premises, having been challenged, which is the subject matter in Title Suit No. 15/2001 filed by the Trust and its President and Secretary wherein a decree for cancellation of the lease deed dated 02.07.2000 has been prayed for and in which suit both the petitioner as well as the opposite parties are defendants being proforma defendant No. 6 and the main defendant Nos. 2 and 3 respectively, the subsequent suit being Title Suit No. 16/2001 presently pending in the Court of the learned Civil Judge (Jr. Division) No. 1, Tinsukia is required to be stayed, otherwise there may be conflicting decisions in the suits. Mr. Khatri referring to a Single Bench decision of this Court in Sri Bhupal Chandra Das v. Sri Durga Barman and Ors. reported in 1990 (1) GLR 400 has submitted that as the matter in issue, i.e. the subject matter in controversy between the parties, is in issue in the former suit being Title Suit No. 15/2001, the learned Court below has committed illegality in passing the impugned order rejecting the application filed u/s 10 of the CPC. Referring to a Division Bench decision of this Court in Smti. Barada Bala Kalitani and Ors. v. Shri Dharmeswar Das Koch and Ors. reported in 1987 (3) GLR 109, it has further been submitted by Mr. Khatri that even where the requirement of Section 10 of the CPC are not satisfied, the recourse to Section 151 CPC is permissible for staying a suit provided the Court is satisfied that such a recourse is necessary for the ends of justice or to prevent abuse of the process of the Court.

7. Mr. Sahewalla, the learned Sr. Counsel, on the other hand, has submitted that the power u/s 10 of the CPC can be exercised by the Court only when the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title. But in the suits in question, the parties are not same and while in Title Suit No. 15/ 2001 the issue is relating to the validity of the lease deed dated

02.07.2000, in Title Suit No. 16/2001, the issue is relating to whether there is relationship of landlord or tenant between the present opposite parties and the petitioner and whether the petitioner is a defaulter in respect of the suit premises. Hence, according to the learned Sr. Counsel the learned Court below has rightly rejected the petition filed u/s 10 of the CPC. Mr. Sahewalla relying on the decision of the Apex Court in Radha Devi v. Deep Narayan Mandal and Ors. reported in : (2003)11SCC759 has further submitted that as under the Assam Urban Areas Rent Control Act, 1972 to get a decree for ejectment the opposite parties are required to prove the contract of tenancy between them and the present petitioner and in such case the Court is not required to go in the question of title over the property, the suit being Title Suit No. 16/2001 instituted by the present opposite parties for ejectment of the petitioner is not to be stayed on the ground of pending of Title" Suit No. 15/2001 filed by the Trust and its President and the Secretary for cancellation of the lease deed.

8. It is not in dispute that Ramesh Chandra Chakraborty Trust Estate and its President and Secretary instituted Title Suit No. 15/2001 for cancellation of the registered deed of lease No. 605/2000 dated 02.07.2000, wherein the present opposite parties are defendant Nos. 2 and 3 and the present petitioner is the proforma defendant No. 6, apart from Shri Keshab Chakraborty, who has been arrayed as defendant No. 1 and who executed and registered the said deed of lease in the name of the Trust and in favour of the present opposite parties. The said suit has been instituted and pending in the Court of the learned Civil Judge (Sr. Division) at Tinsukia. After the institution of the said suit the opposite parties herein instituted Title Suit No. 16/2001 in the Court of the learned Civil Judge (Jr. Division) No. 1 at Tinsukia against the present opposite parties for his ejectment on the ground of defaulter and bona fide requirement, contending that they derived title over the suit premises by means of the registered deed of lease No. 605/2000 executed by Shri Keshab Chakraborty (defendant No. 1 in Title Suit No. 15/2001) on behalf of the Trust and in favour of the present opposite parties (defendant Nos. 2 and 3 in Title Suit No. 15/ 2001).

9. Section 10 of the CPC provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction or before the Supreme Court. In the case in hand, the subject matter in Title Suit No. 15/2001, i.e. the previously instituted suit, and in Title Suit No. 16/2001, i.e. the subsequently instituted suit, is same and the matter in issue in Title Suit No. 16/2001 is also substantially in issue in Title Suit No. 15/ 2001, as the very basis on which the opposite parties claimed the status of landlord has been challenged in Title Suit No. 15/2001 by the Trust. Both

the present petitioner and the opposite parties are also defendants being main defendant Nos. 2 and 3 and proforma defendant No. 6 respectively in Title Suit No. 15/2001. The basis for claiming to be the landlord, i.e. the registered deed of lease No. 605/2000 dated 02.07.2000, by the present opposite parties in respect of the suit premises having been challenged in the previously instituted suit, the subsequent suit being Title Suit No. 16/2001 should not be allowed to proceed till disposal of Title Suit No. 15/2001 as in the event the Title Suit No. 15/2001 is decreed and the lease deed is declared to be void and cancelled, the very basis of claim by the present opposite parties in Title Suit No. 16/2001 would not subsist. Moreover, the petitioner in the written statement denied the relationship of landlord and tenant between them and also denied attornment. The petitioner claims to be the tenant under the Trust.

10. The decision of the Apex Court in Radha Devi (supra) is not applicable in the facts and circumstances of this case as in the present case, as observed above, the very basis on which the opposite parties claimed to be the landlord in respect of the suit premises is under challenged in previously instituted suit being Title Suit No. 15/2001.

11. A Single Bench of this Court in Shri Bhupal Chandra Das (supra) has observed that the phrase "the matter in issue" means the subject in controversy between the parties and there must be substantial identity of matter in issue in the two suits, to apply the provisions of Section 10 of the CPC. A Division Bench of this Court in Smti. Barada Bala Kalitani (supra) has also observed that the Court can take recourse to Section 151 CPC for staying a suit, even where the requirements of Section 10 CPC are not satisfied, provided the Court is satisfied that such a recourse is necessary for the ends of justice or to prevent abuse of the process of the Court and it is not violative of any express and specific provision of the CPC or any other law applicable to the case to be stayed.

12. In view of the aforesaid discussion, I am of the view that the subject matter in dispute in both the suits are identical same, the suit premises being part of the subject matter in Title Suit No. 15/2001 and though all the parties in both the suits are not same, the further proceeding in Title Suit No. 16/2001 requires to be stayed till disposal of Title Suit No. 15/2001 for the reasons recorded above.

13. Hence, the impugned order dated 29.08.2005 passed by the learned Civil Judge (Jr. Division), No. 1, Tinsukia is set aside. The further proceeding in Title Suit No. 16/2001 pending in the Court of the learned Civil Judge (Jr. Division), No. 1, Tinsukia is stayed till disposal of the Title Suit No. 15/2001 presently pending in the Court of the learned Civil Judge (Sr. Division), Tinsukia.

15. The revision petition is allowed.

16. No cost.