

Form of Order SheetDISTRICT : **TINSUKIA****IN THE COURT OF THE CIVIL JUDGE, TINSUKIA**Present:- **Sri Anup Khanal, Civil Judge, Tinsukia****Misc.(J) Case No.09 of 2020**
(Arising out of Title Suit No.52 of 2019)**M/s. J.N. Agency and OthersPetitioners/Defendants****-Vs-****Sri Vinod Kumar Kedia.....Opposite Party/Plaintiff**

Date	Order	Signature
<u>19.10.2020</u>	<p>Both the parties are duly represented by their respective learned counsel.</p> <p>Both the parties were heard earlier on the merit of the instant application and the case is pending for final order.</p> <p>The instant application is filed under Order VII Rule 11 Clause-11(a) and 11(d) r.w. Section 9 of C.P.C. by the petitioners/defendants against the O.P./plaintiff for dismissal/rejection of the plaint.</p> <p><u>The Petitioners/defendants' case in brief is as follows:-</u></p> <p>That the petitioners/defendants have been served with copy of plaint/documents of the main suit on 26.09.2019. That in the meantime on 06.09.2019, the O.P./plaintiff filed one petition for amendment of their plaint in the main suit and injunction application in the Misc.(J) Case and accordingly, those amendment petitions have been allowed by this Court vide Order dated 16.12.2019.</p> <p>That after going through the copy of the plaint and documents annexed therewith, the petitioners/defendants found that the main suit of the O.P./plaintiff is neither maintainable in law nor in facts, rather the O.P./plaintiff has no right to sue the petitioners/defendants.</p>	(Contd...P/2)

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Date	Order	Signature
<u>19.10.2020</u> <u>(Contd...)</u>	<p>That from perusal of the plaint, it appears that there is no cause of action against the petitioner/defendant No.5 and the relief claimed against the petitioner/defendant No. 5 is not tenable in the eye of law as well as facts as the petitioner/defendant No.5 do not have any relation with the O.P./plaintiff in respect of the suit premises and the O.P./plaintiff is not entitled for any relief against the petitioner/defendant No. 5.</p> <p>That the O.P./plaintiff in the plaint has also referred to the filing of Title Suit Nos. 37 of 2012 and 38 of 2012 pending before the learned Munsiff No.1, Tinsukia and have also referred cross-examination of the petitioner/defendant No. 4 as well as exhibited documents it is apparent that there is an inherited contraction in the pleading of the O.P./plaintiff which does not disclose a clear cause of action against the petitioners/defendants.</p> <p>That a suit for ejection of the petitioners/defendants under the Assam Urban Areas Rent Control Act, 1972 as well as eviction of a permissive occupant under the provisions of the Specific Relief Act, 1963 cannot be decided in one and the same plaint. Hence, the instant application praying for dismissal of the suit.</p> <p><u>The plea taken by the O.P./plaintiff in their written objection, in brief, is as follows:-</u></p> <p>That the instant application is neither maintainable in law nor on facts and in present form. That the contents of the application are incomplete, vague and lacks material particular.</p> <p>That the instant application has been filed to delay the matter and fill up the lacuna. That it is specifically denied that the suit of the O.P./plaintiff is neither maintainable in</p>	(Contd...P/3)

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law nor in facts and the O.P./plaintiff has no right to sue the petitioners/defendants.

That cause of action is bundle of facts which includes so many factors and issues, which are required to be settled by this Court while disposing the main suit and after taking into consideration, the evidence and examination of relevant documents of the parties.

That on 30.07.2019, the O.P./plaintiff filed the main suit for declaration that he is the true owner of the suit schedule-A property, wherein suit Schedule-B, C and D are a part of the suit Schedule A land along with other reliefs and for that the O.P./plaintiff submitted requisite Court fee for declaration, eviction, recovery of possession, permanent injunction along with other reliefs and as such, the suit of the O.P./plaintiff cannot be treated simply as a suit under the Assam Urban Areas Rent Control Act, 1972.

That there are exhaustive procedure laid down in the C.P.C. as well as the Specific Relief Act and other provisions of law. Hence, prayed for rejection/dismissal of the instant application with cost.

Argument of the parties:-

The petitioner side learned counsel in his argument both verbally as well as in writing mainly highlighted the following-

That the O.P./plaintiff could not make out any cause of action against the defendant No.5; that this Court has no jurisdiction to try the main suit both under the provisions of Assam Urban Areas Rent Control Act, 1972 and Specific Relief Act, 1963; that the suit is bad for mis-joinder of cause of action and parties since the O.P./plaintiff has failed to bring any document on record to show that the proforma defendant No.2 has ever transferred their right in favour of the O.P./plaintiff; that

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from the contents of the plaint, it is crystal clear that the O.P./plaintiff is pleading different cause of action against different defendants and as such, the suit is not maintainable due to mis-joinder of cause of action; that as per the tenancy agreement, the O.P./plaintiff became a tenant only on 01.04.2012 and did not had any right prior to the said date in respect of the suit premises; that the O.P./plaintiff filed the suit claiming Rs. 1,062/- as rent per month from July, 2019 and the annual rent being Rs.1,062/- X 12 months = Rs.12,744/-, the learned Munsiff, Tinsukia would have jurisdiction and not this Court; that as per the Sale Deed executed on 18.06.2014 for the so called suit premises, the O.P./plaintiff became the owner only on or after the said date and in the said Sale Deed, it is nowhere mentioned that the petitioners/defendants are tenants of the Schedule property or the vendor is the landlord of the said property; that in the plaint, it is mentioned about the petitioners/defendants being defaulters from February, 2012 onwards but the O.P./plaintiff did not had any right at the said period; that from the rent agreement dated 05.03.2012 at Clause-9, it is clearly mentioned that the suit premises shall be used only for business purpose and similarly Clause-21 provides that there shall be no subletting of the suit premises and the contents of the said agreement (document) shall prevail over the statement made contrary by the O.P./plaintiff in the plaint and such story of the plaintiff being not substantiated by documents, the cause of action is illusory; that the O.P./plaintiff has made averments in the plaint that the cause of action arose from the month of January and February, 2012 but from the contents of the plaint, it can be held that the O.P./plaintiff did not have any right, title,

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interest or possession in respect of the suit premises.
Hence, prayed for rejection of the plaint.

The learned counsel for the petitioners/defendants in support of his argument referred to two Judgments of the Hon'ble Supreme Court being **(i) Arivandandam – Vs- T.V. Satyapal and Another [reported in (1977) 4 SCC 467]** and **(ii) Raj Narain –Vs- Laxmi Devi [reported in (2002) 10 SCC 501]**.

On the other hand, the learned counsel for the O.P./plaintiff both verbally and in writing argued and mainly highlighted the following-

that the instant application is neither signed nor verified and no affidavit is sworn by the petitioners; that the contents of the application are vague and incomplete; that cause of action is a bundle of fact which includes many factors and issues required to be settled by the Court while disposing the suit after taking into consideration the evidences and examination of relevant documents of the parties; that while exercising power for rejection of plaint under Order VII Rule 11 C.P.C. only averments in plaint have to be read as a whole and the stand taken by the defendants in their written statement or in the application for rejection of plaint are wholly immaterial; that cause of action and limitation involves both question of law and fact and can be decided only by a trial; that for the purpose of considering the instant application, the averments made in the plaint are to be presumed as correct; that the O.P./plaintiff has filed the main suit for reliefs like, declaration that he is the owner of the Schedule-A property, etc. and the Schedule-B to D properties are a part thereof and the O.P./plaintiff has submitted requisite Court fees for declaration, eviction, recovery of possession, permanent injunction, etc. and the

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main suit thus cannot be treated simply as a suit under Assam Urban Areas Rent Control Act, 1972, that there are exhaustive procedures laid down in the C.P.C. and Specific Relief Act and other provisions of law; that the suit property i.e. Schedule-A property comprises of suit Schedule-B to Schedule-D properties and as such, the O.P./plaintiff has filed the main suit for declaration, recovery of Khas possession, etc. and it would lead to multiplicity of proceedings, if to suits have been filed by the O.P./plaintiff for recovery of Schedule-B property under Assam Urban Areas Rent Control Act and for recovery of Schedule-C and D under Specific Relief Act and doing so would cause injustice to the O.P./plaintiff and will abuse the process of the Court; that the petitioners/defendants had taken Schedule-B property as tenant, Schedule-C property as permissive occupant and Schedule-D property as being illegally occupied at different times; that the petitioners/defendants have not given any ground as to why the main suit is barred under the Assam Urban Areas Rent Control Act or Specific Relief Act. Hence, prayed for rejection of the instant application with cost.

The learned counsel for the O.P./plaintiff also relied upon the following Judgments in support of his argument being ***(i) P.V. Guru Raj Reddy & Another –Vs- P. Neeradha Reddy & Others decided on 13.02.2015 by the Hon'ble Supreme Court; (ii) Civil Revision Petition No.5(K) of 2015 of Hon'ble Gauhati High Court, Kahima Bench; (iii) Suresh Nanda –Vs- Devika Mehta & Others decided on 06.07.2018 in C.R.P. 22/2017 by the Hon'ble Delhi High Court.***

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<p><u>19.10.2020</u> <u>(Contd...)</u></p>	<p><u>Discussions, Decision and reasons thereof:-</u></p> <p>Now, having heard the learned counsel for both the parties on the instant application and having perused the case record minutely, it is found that the instant application is regarding the rejection of plaint prayed by the petitioners/defendants against the O.P./plaintiff in the suit.</p> <p>It is now well settled position of law that in an application under Order VII Rule 11 of C.P.C. the only aspect that needs to be taken into consideration at this stage is the plaint of the plaintiff side and the averments made therein to arrive at a conclusion as to whether the instant case in hand is a fit case for rejection of the plaint and at this stage no question arises as regard going into the defence taken/made by the defendants in their pleadings and/or considering their documents.</p> <p>Now, the petitioners/defendants have mainly raised the fact that there is no cause of action, the suit is not maintainable and some parties are arrayed against whom no relief(s) has been claimed and have no relation with the subject matter and the instant suit is also not maintainable due to mis-joinder of cause of action and two set of laws i.e. the Assam Urban Areas Rent Control Act and the Specific Relief Act being clubbed together for seeking reliefs and which cannot be decided in one and the same suit.</p> <p>Now, having taken into account the said pleas raised by the petitioner/defendant side into consideration and having perused the averments made by the plaintiff in the main suit, it is found that the main suit is instituted by the O.P./plaintiff mainly seeking declaration as regard his right, title and interest over the suit Schedule-A property, comprising therein the suit Schedule-B, C and D</p>	<p>(Contd...P/8)</p>
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properties, praying for recovery of vacant and Khas possession of the Schedule-B, C and D properties and other reliefs including a prayer for grant of permanent injunction in respect of the said properties.

Now, the O.P./plaintiff as found from the averments made in the plaint mainly claims his right, title and interest over the Schedule-A property by virtue of a registered Sale Deed and by virtue of mutation of the said property in his name and by virtue of a family settlement and he paying the land revenue and other taxes thereof in respect of the land and the house standing therein. The further claims of the O.P./plaintiffs as found from the averments/plaint is that the Schedule-B property has been given on rent to the petitioners/defendant Nos.1 to 3 as tenant and rent is also being collected from them and subsequently on request of the petitioner/defendant No. 3, the Schedule-C property was given in occupation of the defendant No.4 as permissive occupant.

It is further found that the O.P./plaintiff has claimed and alleged as found from the averments of the plaint that the petitioners/defendants have defaulted in payment of rent and failed to vacate the Schedule-B and C properties inspite of giving assurance to make the payment of arrear rent and/or vacate the suit properties, rather they instituted one Civil Suit before the Court of the learned Munsiff, Tinsukia being T.S. No.37 of 2012 and T.S. No. 38/2012 on some false and fabricated facts and forging certain documents.

It is further claimed and alleged that the plaintiff being the landlord/owner of the suit premises has been informed to the petitioners/defendants and they are fully aware of it.

It is also alleged by the O.P./plaintiff as found from the

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averments in the plaint that the petitioners/defendant Nos.1 to 3 through their Manager, the defendant No.4 have illegally and un-lawfully occupied another portion of the Schedule-A property i.e. Schedule-D property after institution of said suits before the learned Munsiff.

Thus, from the averments made in the plaint as well as considering the claims and allegations of the O.P./plaintiff in its entirety, it is found that there are questions of facts which would required adjudication and adducing of evidence by the parties to reach a conclusion for arriving at a decision in the suit and it cannot be concluded at this stage without going into the merit of the case that there is either no cause of action for the suit and/or the suit is not maintainable.

Moreover, some of the issues raised by the petitioner side herein are not purely questions of law rather are mixed questions of law and facts and would obviously require a proper adjudication and consideration of required evidence from the parties prior to arriving at a just and reasonable conclusion and which cannot admittedly be done at this stage.

Thus, the instant case in hand is found not a fit case where exercise of power under Order VII Rule 11 C.P.C. is warranted and this Court has arrived at this conclusion having considered the entire averments of the plaint and making a meaningful reading thereof.

Hence, considering the above discussions and observation as the instant application lacks merit, it is thus rejected. However, no cost is imposed under the given facts and circumstances.

Now since the judgments referred by either of the parties do not squarely apply to the factual matrix in hand with the ratio decided therein as such, those are not

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<p><u>19.10.2020</u> <u>(Contd...)</u></p>	<p>discussed in detail for the sake of brevity.</p> <p>Thus the instant application is rejected and disposed on contest without cost.</p>	<p>(Dictated)</p>
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