

Form of Order SheetDISTRICT : **TINSUKIA****IN THE COURT OF THE CIVIL JUDGE, TINSUKIA**Present:- **Sri Anup Khanal, Civil Judge, Tinsukia****Misc.(J) Case No.156 of 2019
(Arising out of Money Suit No.37 of 2019)****Sri Bikash Baruah.....Petitioner/Defendant****-Vs-****Ahmad Khan.....Opposite Party/Plaintiff**

Date	Order	Signature
<u>06.11.2020</u>	<p>Both the parties are duly represented by their respective learned counsel.</p> <p>The instant application is filed by the petitioner/defendant under Order VII Rule 10 r.w. Sections 6, 15, 16, 22 and 151 of C.P.C. praying for return of the plaint of the main suit i.e. Money Suit No.37/2019 to the O.P./plaintiff.</p> <p>Both the parties were heard on the last date and the case is fixed today for final order.</p> <p><u>The Petitioner/defendant's case for filing the instant application in a nutshell is as follows:-</u></p> <p>That the O.P./plaintiff has instituted the main suit i.e. Money Suit No.37/2019 against the petitioner/defendant for recovery of Rs.1,22,147.47 with (inclusive of interest), compensation of Rs.80,000/- and other reliefs and the Court fees of Rs.2,937.85 has been paid for the purpose of jurisdiction and recovery.</p> <p>That the O.P./plaintiff has filed the suit in this Court by exceeding its pecuniary jurisdiction and paying Court Fees having jurisdiction of the Court of lowest grade competent to try it, which is totally illegal.</p> <p>That the actual suit value is Rs.1,22,142.47 (inclusive of interest) and the O.P./plaintiff has only paid the requisite Court fees for recovery of the said amount.</p> <p>That the instant suit is a Money Suit and not a Title Suit and thus, the O.P./plaintiff has no right to claim any</p>	(Contd...P/2)

Assam Schedule VII. Form No.143

HIGH COURT FORM NO. (J) 13

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Present:- **Sri Anup Khanal, Civil Judge, Tinsukia**

Misc.(J) Case No.156 of 2019

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Sri Bikash Baruah.....Petitioner/Defendant

-Vs-

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<p><u>06.11.2020</u> <u>(Contd...)</u></p>	<p>compensation from the petitioner/defendant as the O.P./plaintiff has already claim interest to the tune of Rs.22,142.47 on the alleged financial help amount of Rs.1,00,000/-.</p> <p>That the O.P./plaintiff is not entitled to claim two simultaneous reliefs for single transaction in a Money Suit. That the principal place for filing the suit is Munsiff, Margherita.</p> <p>That it is a general rule that every suits should be instituted in the Court of the lowest grade competent to try it and the object of such provision by requiring a suitor to bring his suit in the Court of the lowest grade competent to try it so that Courts of higher grades may not be over-crowded with suits. Although, the jurisdiction is determined prima-facie by the value put by the plaintiff in his suit but he is not at liberty to give any arbitrary valuation and institute the suit in the Court of his own choice.</p> <p>That since the suit is shown as over-valued and it is patent on the face of the plaint. Hence, the instant application praying for returning the plaint of the main suit to the O.P./plaintiff to be presented before the proper Court i.e. Court of learned Munsiff, Margherita.</p> <p><u>The plea taken by the O.P./plaintiff in their written objection against the instant application (in brief) is as follows:-</u></p> <p>The instant application is vague, groundless and based on after thought to derive undue gain and delay the disposal of the suit.</p> <p>That the O.P./plaintiff has rightly assessed the value</p>	<p>(Contd...P/3)</p>

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(Contd...)

of the suit and paid the Court fee and at the time of presentation of the plaint, this Court verified all the requisite requirement, payment of Court fee, valuation of suit and on being satisfied passed an order for issuance of summons upon the petitioner/defendant.

That the plaint itself speaks about O.P./plaintiff having claim of Rs.2,02,142.47 from the petitioner/defendant and as such, the suit is rightly filed before the Court. Hence, prayed for rejection of the instant application with heavy cost.

Argument forwarded by the parties:-

Both the sides were heard.

The learned counsel for the petitioner/defendant argued mainly highlighting the following:-

That it is the principle of law that a suit is required to be filed or instituted at its original place of jurisdiction and before the Court of the lowest grade competent to try it and thus, the instant suit in hand which is over-valued by the O.P./plaintiff side is required to be tried by the Court of the learned Munsiff, Margherita; that the O.P./plaintiff has filed this suit only for recovery of the amount alleged to have been extended by him to the petitioner/defendant and that amount calculated with the interest rate total amounts to Rs.1,22,142.47 but the O.P./plaintiff claiming compensation amount of Rs.80,000/- has over valued the suit which is not permissible as per various provisions of C.P.C. and other relevant laws. Hence, prayed for return of the plaint to the O.P./plaintiff for presentation before the Court of the learned Munsiff, Margherita.

The learned counsel for the O.P./plaintiff on the other

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<p><u>06.11.2020</u> <u>(Contd...)</u></p>	<p>hand argued highlighting the following-</p> <p>That the instant suit is correctly filed before this Court as the plaintiff is claiming an amount of Rs.2,02,142.47 from the petitioner/defendant and at this stage, it can not be ascertained as to whether the O.P./plaintiff is entitled to the compensation as prayed by him.</p> <p>The learned counsel for the O.P./plaintiff however admits that due to miscalculation, they have failed to deposit Court Fees against the total amount of Rs.2,02,142.47 though it has been shown so in the Title Page of the plaint and has prayed for allowing them to deposit the Deficit Court Fees.</p> <p><u>Discussion, decision and reasons thereof:-</u></p> <p>Now, on hearing the learned counsel for both the parties and on perusing the case record, it is found that admittedly the main suit has been filed by the plaintiff for recovery of an amount of Rs.1,22,142.47 (inclusive of interest) alleging that the defendant has taken an amount of Rs.1,00,000/- from him by executing an agreement on 13.03.2018. It is further found that the plaintiff has alleged that the defendant has deliberately failed and neglected to repay the said amount instead of request made by the plaintiff and due to which, the plaintiff has suffered financial loss as well as harassment, etc. and has allegedly claimed recovery of compensation amounting to Rs.80,000/- from the defendant along with other reliefs.</p> <p>It is true what has been submitted and argued by the learned counsel for the petitioner/defendant to the effect that every suit should be instituted in the Court of the lowest grade competent to try it and one cannot be allowed to invoke jurisdiction of the Court of higher grade</p>	<p>(Contd...P/5)</p>
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<p><u>06.11.2020</u> <u>(Contd...)</u></p>	<p>by over valuing a suit and truly under such circumstances a Court would have ample jurisdiction to prevent such abuse of the process of law.</p> <p>Now, in the instant case in hand when the suit is filed for recovery of money, which is inclusive of interest and compensation, the total amount claimed by the plaintiff has to be included in determining the value of the suit. Here, admittedly, the plaintiff has claimed recovery of a total amount of Rs.2,02,142.47 including the compensation amount of Rs.80,000/- and it can not be decided at this stage and that also in the instant application as to whether the plaintiff is entitled to such compensation or not and thus, the said total amount claimed has to be calculated in determining the value of the suit. Moreover, it cannot be said with certainty at this preliminary stage that the plaintiff, without being given due opportunity, is not entitled to get the said compensation in the instant suit as the said amount of compensation is either absurd or imaginary or not maintainable.</p> <p>Hence, considering the above discussions and observations, this Court is of the view that it cannot be concluded at this stage that this Court has no pecuniary jurisdiction to try the suit and as such, the instant application is devoid of any merit and is accordingly rejected.</p> <p>However, parties are to bear their own cost.</p> <p>The instant application is accordingly rejected and disposed on contest without cost.</p>	<p>(Dictated)</p>
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