

Sunita Negi vs. M/s Continental Intra-Tech

COMS No. 6 of 2019

04.04.2022 Present: Mr. Anand Sharma, Senior Advocate with Mr. Jagan Nath, Advocate for the plaintiff.

Mr. Dibender Ghosh, Advocate for the defendants.

CMP N. 433 of 2021

This application shall be taken up for consideration at the time of recording the evidence of the parties.

CMP No. 361 of 2021

By way of this application filed under Order 7, Rule 11 of the Code of Civil Procedure, a prayer has been made by the applicants/defendants for the dismissal of the suit *inter alia* on the ground that the same does not disclose any cause of action and further the same is barred by law.

I have heard learned Counsel for the parties and also gone through the averments made in the application as well as the plaint. Before proceeding any further, one fact, which is necessary to be referred at this stage is that the suit was filed by the plaintiff in the year 2019 and this application has been preferred by the defendants in the year 2021. In the interregnum, after completion of the pleadings of the parties, even the issues were framed as far back as in November, 2019, and perusal of issues framed demonstrates that amongst other

issues, Issue No. 7 is on the maintainability of the suit and Issue No. 8 is on the point of cause of action. There is an Issue on limitation also.

Learned Counsel for the applicants/defendants has argued that as the plaintiff *inter alia* is seeking a decree for mandatory injunction for restoration of possession of the suit land, which was initially acquired from the plaintiff for the establishment of a Hydro Power Project and that too through the process of land acquisition, the suit is hit by the provisions of Section 52 of the Land Acquisition Act and further in terms of the averments contained in the plaint itself, as the money transaction took place in the year 2007, the suit is hit by limitation.

By way of this suit, the plaintiff has *inter alia* prayed for four reliefs and the same are enumerated as under:-

(a) Decree for declaration and possession may kindly be passed, to the effect that the plaintiff may kindly be declared as owner of the suit property along with all its rights in respect to the land bearing Khasra No. 1879 and 1880 situated at Kullu, and in alternative the plaintiff may kindly be declared as equity shareholder to the tune of 33% of equity shares in the company M/s Continental Infrastructure as per the understanding in lieu of the loan amounting to Rupees 30,00,000/- (Rupees Thirty Lakhs), plus up-to-date interest from the

date of investment made i.e. 16/10/2007, at the rate of 24% i.e. (Rs. 30,00,000 X 24/100=Rs 79,20,000/-), Rupees Seventy Nine lakhs Twenty Thousand, total amounting to Rupees One Crore Nine Lakhs Twenty Thousand, (30,00,000/- +Rs 79,20,000/-=Rs 1,09,20,000/-) till the filing of the present suit and future interest at the rate of 24% till the pendency of the present suit may also be ordered to be granted by the plaintiff.

b. Decree for mandatory injunction may kindly be passed for restoring back the possession in favour of plaintiff of the suit land bearing in Khasra No. 1879 and 1880 situated at Kullu, which were initially taken from the plaintiff for the establishment of Hydro Power Project particularly for the purpose of Magazine and Muck Dumping but later on divergent to the permissions sought from the authorities the same is being used for residential purposes.

c. Decree for permanent prohibitory injunction may kindly be passed restraining the defendant's from changing the nature of the Suit Property and further restricting for alienation or creating any charge/encumbrance on the Suit property bearing in

Khasra No. 1879 and 1880 situated at Kullu, during the pendency of the present suit.

d. Decree for recovery of amount may kindly be passed by way of damages of the property of the plaintiff by way of use and occupation of the land @ Rs. 25,000/- per month w.e.f. 16/10/2007, amount to (Rs. 25000 X 12M=Rs. 3,00,000/- per year), along with interest @ 24% per annum amounting to (Rs. 3,00,000 X 24/100=Rs. 3,72,000/-) total amounting to Rs. 3,72,000/- X 11 years+Rs/ 40,92,000/-) Rupess Forty Lakhs Ninty Two Thousand only, till the fi9ling of the present suit and further pendent like and future interest till the possession by passing a decree against the defendants.”

The foundation of the case of the plaintiff is the factum of the suit land, post acquisition not being utilized for the purpose, for which, the same was acquired. This Court is of the considered view that from the contents of the pleadings *per se*, it cannot be said that the suit is either barred by any law or it does not discloses any cause of action. Whether or not the plaintiff is entitled to the reliefs claimed therein, is a matter of adjudication and in view of the issues which have been framed by the Court on the strength of the respective pleadings of the parties, the issues of cause of action, limitation as also the suit not being maintainable shall be tried and decided by the Court.

The points of cause of action, limitation, as also maintainability of the suit, in terms of the prayers made in the plaint as also pleadings therein, are questions of law and fact, which obviously, this Court will dwell upon after the parties shall lead their respective evidence in support of their respective contentions, however, at this stage, it cannot be said that the suit either does not disclose any cause of action or is barred by law so as to be dismissed under the provisions of Order 7, Rule 11 of the Code of Civil Procedure. According this application being devoid of merit is dismissed.

(Ajay Mohan Goel)
Judge

April 04, 2022
(narender)