



Serial No. 08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 21 of 2018

Date of order: 26.08.2019

Shri Arjun Sohpdang & Anr.

Vs.

Smt. Philet Rynjah

Coram:

Hon'ble Mr. Justice Ajay Kumar Mittal, Chief Justice

Appearance:

For the Petitioner/Appellant(s) : Mr. S.P. Roy, Adv.

For the Respondent(s) : None

ORAL:-

1. The revision petitioners have approached this Court under Article 227 of the Constitution of India read with Rule 36A of the Rules of the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 [In short, 'the Rules'] impugning the order dated 07.08.2018 passed in Title Suit No. 17 of 2017 by the Judge, District Council Court, Khasi Hills, Shillong.

2. Briefly, the facts may be noticed.

3. The plaintiff-respondent instituted a Title Suit No. 17 of 2009 which was later on re-numbered as Title Suit No. 17 of 2017 against the defendants-petitioners seeking declaration of rights, title and interest, permanent injunction and eviction from the suit land. The plaintiff-respondent claimed that she is the owner of a plot of land measuring 22,340 sq.ft. situated at 13th Mile, Tamulikuchi, Raid Marwat, Myllem Syiemship, Ri-Bhoi District, Meghalaya and the said plot of land was settled in favour of the plaintiff-respondent vide Patta dated 07.03.1979 issued by (Late) Ashit Basan of Raid Marwet.

4. Further, it is averred in the plaint that vide judgment and decree dated 19.08.2011, passed by the trial court, T.S. No. 17 of 2009, was



decreed ex-parte against which the defendants-petitioners preferred an appeal being M.C.A. No. 13 of 2012 before the Judge, District Council Court, Shillong. The Judge, District Council Court, Shillong on 27.03.2017 passed the order in M.C.A. No. 13 of 2012 setting aside the judgement and decree of the trial court dated 19.08.2011 and directed the trial court to try the suit afresh. The case was thereafter fixed before the trial court on 12.04.2017 when notice was issued to both the parties to appear on 28.04.2017. Thereafter, the case was taken up on 04.07.2017 when the defendants-petitioners took time to file their written statement on the next date i.e., 09.08.2017. However, further time was sought by them on 09.08.2017 whereas the plaintiff was absent. On the next date i.e., 19.09.2017 written statement was filed by the defendants whereupon, the case was fixed on 06.11.2017 for framing of issues and production of documents. Thereupon, both the parties filed their respective issues. The issues were framed on 05.02.2018 and next date fixed was 28.02.2018 for steps to be taken by the respondent-plaintiff for submission of list of witnesses. On 28.02.2018 no steps were taken by the respondent-plaintiff for list of witnesses and next date fixed was 03.04.2018. Again on 03.04.2018, the respondent-plaintiff did not take steps for list of witnesses and the matter was posted on 07.05.2018. Both the parties filed their list of witnesses on 07.05.2018. The case was then fixed for 29.05.2018 when the plaintiff-respondent was absent accordingly the next date was fixed on 20.06.2018 for PWs. On 20.06.2018 and 16.07.2018 when learned counsel for the respondent-plaintiff prayed for time for filing the list of PWs, learned counsel for the defendants-petitioners raised an objection that same request was repeated by the respondent-plaintiff to adduce evidence whereupon the trial court granted another opportunity fixing 07.08.2018 as the date for filing of PWs. On 07.08.2018, the plaintiff-respondent was absent without taking any steps. Learned counsel for the defendants-petitioners argued that in view of provisions of Order IX Rule 8 CPC, the suit was liable to be dismissed on that day. The trial court having failed to dismiss the suit had after closing the evidence of the plaintiff directed the



defendants to lead evidence. It is this order which has necessitated the defendants-petitioners to approach this Court.

5. According to the learned counsel for the defendants-petitioners, under Order IX Rule 8 of the Code of Civil Procedure, 1908 [In short 'CPC'] where the defendant only appears and the plaintiff does not appear when the suit is called on for hearing, the Court is left with no option but to dismiss the suit unless the defendant admits the claim in which eventuality the Court shall pass a decree against the defendant upon such admission. However, where only part of the claim has been admitted, the trial court shall dismiss the suit so far as it relates to the remainder. It was contended that the trial court had failed to follow the procedure prescribed under the provisions of Order IX Rule 8 CPC. As such, instead of dismissing the suit in default for non-appearance of the plaintiff-respondent, the trial court had closed the evidence of the plaintiff-respondent and directed the defendants-petitioners to produce evidence on 30.08.2018.

6. Upon notice having been issued to the plaintiff-respondent, no one has chosen to appear on behalf of the plaintiff-respondent to oppose the prayer made in this petition.

7. After hearing the learned counsel for the petitioners-defendants, I find that there is force in his submissions. The relevant rule with which we are concerned is Order IX Rule 8 CPC in the present case. It would be apposite to reproduce Order IX Rule 8 CPC which reads thus;

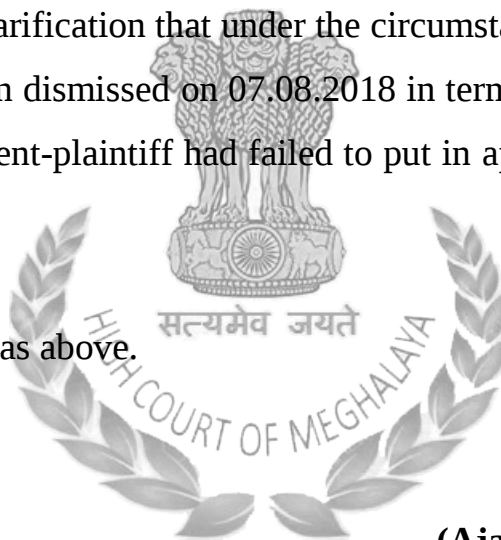
“8. Procedure where defendant only appears.- Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.”



Order IX Rule 8 CPC enjoins the court that where the defendant appears and, the plaintiff does not appear when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the court shall pass a decree against the defendant upon such admission, and, where part of the claim only has been admitted, shall dismiss the suit as it relates to the remainder.

8. Accordingly, in view of the above, the trial court instead of dismissing the suit on 07.08.2018 had passed the impugned order which is contrary to the statutory provision contained in Order IX Rule 8 CPC. Consequently, this revision petition is allowed and the impugned order is set aside with the clarification that under the circumstances the suit shall be deemed to have been dismissed on 07.08.2018 in terms of Order IX Rule 8 CPC as the respondent-plaintiff had failed to put in appearance on the said date.

9. Disposed of as above.



(Ajay Kumar Mittal)
Chief Justice

Meghalaya
26.08.2019
"Sylvana PS"