

COURT OF PRINCIPAL DISTRICT JUDGE : BANDIPORA

File No. 336/2018


CNR No. JKBPO20003622018

Date of Institution: 11.10.2018

Date of Decision: 07/06/2023

Gh Rasool Wani Son-in-law of Mohammad Sultan Lone
Resident of Chuntimullah Bandipora.

...Plaintiff**Through:- Mr. Shafeeq Ahmad, Advocate****Vs**

 1. Union of India through Defense Secretary, New Delhi,
India & Ors

.... Defendant**Through:- Karnail Singh, Advocate**

In the matter of : **Suit for recovery**

Coram:- Amit Sharma**JOCODE:JK00127**

ORDER

1. By virtue of this order the preliminary issues which were settled down by this court vide order dated 23/11/2022, are taken for adjudication on merits in light of the arguments advanced by the learned counsel for the parties. The said issues are as under;

Issue No.7:

“ Whether the suit of the plaintiff merits rejection under Order 7 Rule 11 of CPC as there is no sanction under Armed Forces Protection Act ? OPD

Issue No.8:

Whether the suit of the plaintiff merits rejection as the plaintiff has no cause of action ? OPD

Issue No.9:

“Whether the suit merits rejection as no duplicate copy of the suit nor affidavit is filed by plaintiff ? OPD


2. The learned counsel of the defendant has opened up his arguments thereby stated that the present suit is hit by Order 7 Rule 11 of CPC as well as for want of cause of action, purely on this ground that as per Section 7 of The Armed Forces (Jammu and Kashmir) Special Protection Act, 1990 no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

3. By giving reference to this express provision the learned counsel has further advanced his arguments that the plaintiff has failed to obtain the proper sanction from the Central Government as such he is incompetent to file

the present suit against the Army Authorities. Whereas this fact has not been disputed that the suit land which has been demonstrated in the plaint is in the possession of the Army till date for which the rent has been regularly paid by the Army Authorities to the concerned quarter. It has also been highlighted by the learned counsel of the defendant that at the time when the possession was taken over by the Army Authorities the said possession rooted to the Army authorities through the district Administration Officers and for which the set procedure has been formulated for handing over and taking over. The learned counsel of defendant in support of his arguments has cited case law titled:

**Naga People's Movement of Human Rights V
Union of India**

AIR 1998 Supreme Court, Page 431

-  4. Whereas the learned counsel of the plaintiff has rebutted this argument and stated that as per the plaint **the plaintiff is claiming only the compensation with respect to the trees cut down by the defendants as the said trees were total 85 in numbers at the time when the possessions were taken over by defendants and thereafter 64 trees were cut down by them and the cost calculated has been demonstrated in the plaint.** This very nature of dispute nowhere covers under the category of the powers defined under Section 4 of The Armed Forces (J&K) Special Powers Act, 1990. Here the learned counsel of the plaintiff has stressed upon this point that the powers which has been vested with Armed Forces and for the

exercise of said power the Section 7 is the protection provided to the Armed Forces in order to exercise their power as vested to them under Section 4 of Armed Forces (J&K) Special Powers Act, 1990. Therefore, the present suit is not hit either for want of sanction or for cause of action. Because through the medium of this suit the plaintiff is claiming the cost of compensation of the trees which were cut down by the defendants against the spirit of the agreement and it is not disputed that the property is not in possession of the defendants and it is also not disputed that the trees were not present over the portion of the land when same was handed over to the Army Authorities. For which the plaintiff has annexed the sufficient annexures which clearly demonstrate the nature and number of the trees which existed over the suit land at the time when the possession were taken by the Army authorities.

5. In view of the aforesaid arguments advanced by the parties the core of the argument is revolving around this point that :--

“Whether the sanction is required before filing such types of suit in the Civil Court.”

After demonstrating the aforesaid core point between the parties it is proper to highlight the relevant Section 4 of the Armed Forces Act on the strength of which the protection has been provided to the Armed Forces regarding the exercise of powers in the disturbed areas as described under this Act. From the five clauses contained under Section 4 (a to e), the present set of


controversy as demonstrated in the main suit no where cover within the ambit of Special Powers provided to the Armed forces under this Act. Meaning thereby in the present suit the dispute between the plaintiff and the defendants are purely civil in nature where the defendant obtained the property of the plaintiff on rent basis and the documents of handing over and taking over possession was also executed between them on 02/01/2008 this certificate has been annexed along with written statement as Annexure-1 with respect of 25 Kanals & 18 Marlas of land situated at village Cunitmulla, Tehsil Bandipora. It has also been reflected in said handing over and taking over certificate that the said land is in occupation of RR w.e.f 2001 and the said handing over and taking over certificate also contained the list of trees which were taken over by the Army at the time when the possession was handed over. It is only these trees regarding which the plaintiff is claiming compensation from Army Authorities that these trees were cut down by the Army Authorities without the permission and consent of the land owners and due to this the cause of action accrued to the plaintiff to file the present suit.

6. According to view point of this court the status of the defendant in the present set of controversy is not more than the "Tenant" and as a tenant they are not supposed to make any improvement or cut down any trees existing over the land which was rented out to the Army Authorities with effect from 2008. Therefore this kind of dispute nowhere covers under the definition clause a to e of Section (4) of (Armed Forces

Special Act). Hence there is no need for the plaintiff to obtain sanction from the central government before filing suit in such types of controversy.

7. Hence both the issues No. 7 & 8 are decided in favour of the plaintiff and against the defendant with observation that while determining the issues with regard to the jurisdiction of the civil court the law is settled on this point that the court has to examine the averments in the plaint and the plea taken by the defendant in its written statement would be irrelevant.
8. So for the issue No.9 is concerned the same has not been pressed at this stage and accordingly the decision of preliminary issue No. 9 is deferred and it will be decided along with other factual issues at the final stage. Order is announced accordingly. Let the file come up on 04/07/2023 for further proceedings.

Announced
07/06/2023


Principal District Judge
Bandipora.