

(2008) 12 GAU CK 0017
In the Gauhati High Court

Abdul Mannan Mondal

APPELLANT

Vs

Abdus Sattar Mondal and Others

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 80

Citation : (2009) 6 GLR 902

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The judgment and order dated 19.8.2008 passed by the learned Civil Judge, Kokrajhar in Title Appeal No. 07/2006 reversing the judgment and decree dated 28.9.2006 passed by the learned Munsiff, Kokrajhar in Title Suit No. 53/1999, is under challenge in the instant appeal u/s 100 of the CPC ("the Code").

2. I have heard Mr. H.R. Khari, Learned Counsel for the appellant/plaintiff and Mr. A.S. Choudhury, senior advocate assisted by Mr. R. Ali, Advocate for the respondents-defendants.

3. The parties are brothers. The appellant-plaintiff instituted the aforementioned suit against the respondents-defendants praying for decree, inter alia, for declaration (1) of his right, title and interest in land measuring 1 Katha and 7 3/4 Lechas covered by Dag No. 683 and included in Periodic Patta No. 29 described in Schedule "B" to the plaint together with the appendages i.e., latrine, bath room, well etc. thereon, (2) that the proforma defendant No. 4, was liable in law to pay rent in respect of the suit premises to him and for permanent injunction restraining the defendant Nos. 1, 2 and 3 from realizing rent for the above. According to the appellant-plaintiff after the death of the father of the parties in the year 1991, they separated and their shares in the properties were amicably settled and partitioned. He averred that during the life time of the father, the

parties had jointly purchased land measuring 1 Bigha, 11 Lechas described in Schedule "A" to the plaint by a registered deed of sale in the year 1983, whereafter, the same was also amicably partitioned, as a result whereof, land measuring 1 Katha 7 3/4 Lechas fell in his share. Thereafter, he with the due permission of the Gossaigaon (Municipal) Town committee raised a structure thereon in the year 1984 and let out the house on rent to the respondent-defendant No. 4 at a monthly rent to be fixed by the Public Works Department (Building Division) under the Assam Urban Areas Rent Control Act, 1972. According to the respondent-plaintiff, the said respondent since thereafter is in occupation of the suit premises. He has alleged that the respondent-defendant No. 1, who is an employee of the Public Works Department in collaboration with the officials thereof tried to wrest the rent in his favour. The appellant-plaintiff, however, getting a whiff of the evil design, of the said respondent issued an advocates notice to the respondent-defendant No. 4 not to part with the rent in favour of the respondent-defendant No. 1. It transpire subsequent thereto that a certificate had been issued in the name of the respondent-defendant No. 1 by the Engineer of the PWD on 16.1.1999, indicating that the house was owned by the latter. As the appellant-plaintiffs repeated requests to correct the anomaly failed and the respondent-defendant No. 4 did not pay rent to him, the suit was filed. The appellant-plaintiff has also alleged that in the process, the respondent-defendant No. 1 also claimed exclusive right, title and the interest in the suit premises.

4. The respondent-defendant Nos. 1, 2 and 3, in their joint written statement, while disclosing the respondent-defendant No. 3 was a person of unsound mind and, therefore, represented by his natural guardian and mother, denied the appellant-plaintiff's claim of exclusive right, title and interest in the suit premises. They denied the factum of partition of the property involved or any amicable settlement in connection therewith. They insisted that the land described in Schedule A to the plaint was purchased by their father in their name but the same had remained unpartitioned. They maintained that the permission for construction of house on the suit land stood in the name of the appellant-plaintiff as approved by all the brothers and that the constructions were made with the joint endeavour of the parties. They also referred to a consensus in permitting the appellant-plaintiff's name to be shown as the owner thereof on the understanding that the rent collected therefrom would be distributed amongst the brothers. The respondents-defendants alleged that the appellant-plaintiff, however, did not share the rent and eventually on 10.4.1997 executed a written agreement in favour of the other brothers, undertaking not to realize rent any further. According to the respondents-defendants in the agreement, the appellant-plaintiff also admitted the ownership of the house of the defendant No. 1.

5. The respondent-defendant No. 4, Sub-Divisional Agricultural Officer, Gossaigaon in his written statement, while admitting that though the fair rent of the Office building was fixed in the name of the appellant-plaintiff, it was in fact a

joint property and that after such computation made by the Executive Engineer, PWD (Building Division), Kokrajhar, rent was paid to the respondent-defendant No. 1. The claim of the appellant-plaintiff's for rent was denied.

6. The learned trial court framed several issues on the basis of the pleadings of the parties. Thereafter, they adduced evidence, oral and documentary. The suit having been decreed, the respondents-defendants preferred the aforementioned appeal, which by the impugned judgment and decree, has been allowed, dismissing the suit thereby.

6A. Mr. Khan, has emphatically urged that it being apparent from the pleadings and the evidence on record that the land described in Schedule A to the plaint had been amicably partitioned though orally, whereafter the respondent-plaintiff had become the exclusive owner of the premises described in Schedule B, the learned lower appellate court erred in law in dismissing the suit holding to the contrary. According to the Learned Counsel, the appellant-plaintiff was entitled to the declaration as prayed for, even on the basis of the law of inheritance of immovable property governing the parties. Mr. Khan, further urged that the acceptance of the Nadabi Patra (deed of relinquishment of the appellant-plaintiff's share in the suit property) being afflicted by errors, on elementary principles of law of proof, the impugned judgment and decree is vitiated thereby as well.

7. Mr. Choudhury, learned senior Counsel for the respondents-defendants has urged that the findings of the learned lower appellate court on the issues framed being based on correct appreciation of the pleadings and the evidence on record as well as the law involved, no interference therewith is warranted in the present appeal. According to him, the appellant-plaintiff having failed to discharge his burden in law to prove his case, the learned court below rightly dismissed the suit.

8. The pleadings of the parties as Well as the evidence adduced, as presently available, have been duly marshalled and the arguments considered. The learned lower appellate court, while deciding the issue No. 4 pertaining to non-joinder of necessary parties, held the omission to implead the Government of Assam to be fatal. It held the view that as admittedly, the respondent-defendant No. 4 was a public servant to whom the suit premises had been rented out, impleadment of the State of Assam and the notice u/s 80 of the Code were unavoidably imperatives for the suit to be maintainable. The pleadings of the parties and the evidence demonstrate that the suit premises, house, the office of the respondent-defendant No. 4, Sub-Divisional Agricultural Officer, Gossaigaon, the fair rent where for, had also been fixed by the defendant-respondent. It is, therefore, amply clear that the respondent-defendant No. 4 was not in occupation of the suit premises in his individual capacity but as an officer of the department. The said respondent-defendant in his written statement, as noticed hereinabove, has asserted that the fair rent had been re-fixed in the name of the respondent-defendant and, therefore, the appellant-plaintiff's claim for rent was not tenable.

Having regard to the reliefs prayed for in the plaint, I am of the view that the determination made by the learned Lower Appellate court, vis-a-vis the issue of non-joinder of necessary party cannot be brushed aside as illogical and untenable.

9. On the aspect of partition of the land described in Schedule A of which the plot described in Schedule B is a part, the narration contained in the impugned judgment and order visibly testifies that the learned Lower Appellate court had meticulously analysed the evidence on record both oral and documentary to hold against the appellant-plaintiff's claim pertaining thereto. It recorded the contradictions in the testimony of the witnesses of the appellant-plaintiff on the issue of partition and construction of the house on the suit land claimed to be made by him. The learned court below noticed that the appellant-plaintiff had failed to mention the date of the partition, as claimed by him and that the same had been asserted to be oral in form. On a scrutiny of the evidence in this regard, it recorded the absence of any material to indicate that all the co-purchasers had assembled therefor. It also took note of the fact that the respondent-defendant No. 3, though a person of unsound mind, had remained unrepresented at the time of alleged partition as claimed by the appellant-plaintiff. His admission that the disputed land was not registered in any individual name, was also taken note of. Contrary to this scrutiny of the pleadings and the evidence of the parties, the learned trial court inferred such a partition from a document Ext. F, whereby the respondent-defendants No. 2 and 3 had gifted their shares to respondent-defendant No. 1 in the Schedule A property in the year 1998. The suit was decreed by it, principally on that deduction. The learned lower appellate court's perspective being more objective, methodical and informed with reason, its decision on the issue relating to partition and ownership of the suit premise commends for acceptance.

10. The learned appellate court laid greater emphasis on the evidence adduced by the respondents-defendants to prove the Nadabi Patra Ext. E, to demonstrate the abandonment of the appellant-plaintiff's claim over the suit property in favour of the respondent-defendant No. 1. It attached a higher probative value to the oral evidence of witness of the respondent-defendants over the opinion expressed by the handwriting expert qua the said document. While doing so, the learned Lower Appellate court noticed the omission on the part of the expert to produce the relevant records/documents evidencing the process undertaken and the findings recorded impelling his (handwriting expert) conclusions. Admission of the expert to the possibility of variance in signatures depending on time and alignments was also noted. It was, therefore, held that the appellant-plaintiff was only a co-owner of the suit premises. The conclusions of the learned court below in this regard also cannot be readily repudiated to be uncalled for and lacking in rationale.

11. On a totality of the considerations as noticed hereinabove, this Court is of the view, having regard to the constricted scope of interference in the exercise of its

second appellate jurisdiction that the contentions raised on behalf of the appellant-plaintiff cannot be sustained. No substantial question of law is discernible to be answered in the facts and circumstances of the case. The appeal, therefore, is without any merit and thus dismissed. Prepare the decree accordingly. No costs.