

(2019) 01 JH CK 0141
In the Jharkhand High Court
Case No : Second Appeal No. 48 Of 2015

Anthony Tigga And Ors

APPELLANT

Vs

Shibnarayan Bhumij And Ors

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 46
Code Of Civil Procedure, 1908 — Section 96, 100, 103

Citation : (2019) 01 JH CK 0141

Hon'ble Judges : Dr S. N. Pathak, J

Bench : Single Bench

Advocate : Praveen Akhouri

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the Judgement dated 25.09.2014 (decree sealed and signed on 05.11.2014), passed by District Judge - VI, East Singhbhum, Jamshedpur in Title Appeal No. 53 of 2009 whereby Judgment dated 29.08.2009 (decree sealed and signed on 04.09.2009), passed by Sub Judge-VI, Jamshedpur, East Singhbhum in Title Suit No. 41 of 2001 has been upheld and the appeal stood dismissed.

2. Plaintiffs are appellants and suit was brought by them for declaration of title and confirmation of possession with respect to suit land. Land measuring 0.11½ Acre of Don Land of Survey Plot No. 528, under Survey Khata No. 100 of Mouza Patamda, Survey Thana No. 140 was allegedly purchased by the plaintiffs jointly through a registered Sale Deed No. 2839 executed by Gangadhar Sardar for valuable consideration. Vendor had already obtained permission of Deputy Collector, Jamshedpur under Section 46 of CNT Act. Plaintiffs came into possession over the suit land and mutated their names in the Circle Office, Patamda and have been paying rent to the State. Survey Khatian was prepared in the name of Chinibas Bhumij, f/o Gangadhar Singh Bhumij and Sambhu Singh in the year 1964 and they were in joint possession. After death of Chinibas

Singh, Gangadhar Bhumij inherited the land. Further, after death of Chinibas Singh, Gangadhar Bhumij inherited his share. There was mutual oral partition between the recorded tenants and they were in possession of their respective shares. No objection was raised by anyone during granting permission under Section 46 of the C.N.T. Act and under proceeding of mutation. On 10.04.2001 the defendant no. 1 made efforts to get the suit land to plough which was objected by the plaintiffs. The plaintiffs had prayed for decree and permanent injunction.

3. Defendants appeared and filed written statement before the learned trial court showing ignorance about sale of the suit land by Chinibas Sardar in favour of the plaintiffs. They claimed sale deed to be false and fabricated. It was further contended that Gangadhar Sardar was not owner of R.S. Plot No. 528 under R.S. Khata No. 100. The said plot was recorded in the name of Kokil Bhumij, Gahan Bhumij, Mohan Bhumij, Madhab Bhumij, all sons of Haru Bhumij. The said entry of Khatian was prepared in the year 1908. In the survey settlement of 1964, land under Khata No. 100, RS Plot No. 528 was recorded in the name of Chinibas Bhumij, son of Kokil Bhumij showing one share.

The survey settlement 1964 was baseless because Khata No. 100, R.S. Plot No. 528 is carved out from R.S. Plot No. 225, under R.S. Khata No. 72 and Kokil Bhumij had got 1/4th share in C.S. Plot No. 225. Chinibas Sardar was not related with Shambhu Bhumij and he was a servant which has got support from T.S. No. 304/67. That suit was filed by Sushila Bhumij, widow of late Shambhu Bhumij against defendant Chinibas Bhumij. That case was compromised and a joint compromise petition was filed on 19.06.1967. The compromise petition reveals that entry of name of Chinibas Bhumij in Khatian of 1964 settlement under Khata No. 100, Plot No. 528 was erroneous. The defendant denied about any knowledge of proceeding under Section 46 of C.N.T. Act. So, he did not file any objection in that proceeding. The defendant denied possession of plaintiffs over the suit land and submitted further that the defendant were all in possession of the suit land.

It was further contended that he was not knowing about the proceeding of Mutation Case No. 90 of 2000 - 01. He did not know that the plaintiff has been paying rent to the Government of Bihar for the land in dispute. He further denied joint possession of Chinibas Bhumij and Shambhu Singh over the suit land. Chinibas Sardar was not owner of the suit land and Chinibas Sardar had already compromised this matter in T.S. No. 304/67 in the court of Munsif at Jamshedpur. No partition had taken place between Shambhu Singh and Chinibas Bhumij. He did not know about transfer of land by Gangadhar Singh in favour of the plaintiff. After death of Shambhu Singh, present defendant inherited the suit land. The defendant denied versions of the plaintiff through his written statement.

4. After appearance of parties, issues were framed by learned trial court and thereafter witnesses adduced their evidences. After hearing both sides, suit stood dismissed against which plaintiffs preferred appeal vide Title Appeal No. 53

of 2009. The first appellate court discussed in details grounds taken by the plaintiffs/appellants and also discussed in details different provisions of Act and rules as well as judicial pronouncements and affirmed the Judgment and Decree passed by trial court holding that there is no irregularity in the impugned Judgment. Being aggrieved, plaintiffs/ appellants/ appellants have preferred this Second Appeal for assailing impugned Judgments of both the courts below.

5. Mr. Praveen Akhouri, learned counsel appearing on behalf of the appellant, referring to the grounds mentioned in the memo of appeal submits that there is good ground and as such this appeal may be admitted after formulating substantial question of law as mentioned in para-2 of the memo of appeal.

6. Nobody appears on behalf of the respondents.

7. I have heard counsel for the appellant on the point of admission and formulating substantial question of law. After hearing learned counsel for the appellant upto a length and on perusal of findings of fact recorded concurrently by the courts below, I find that findings of fact as recorded by both courts below do not suffer from any illegality or perversity warranting any interference in this appeal. In *Krishnan v. Backiam* and another reported in 2007(12) SCC 190 it has been held at para-11 that

"11. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the findings of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the first appellate court can be challenged in second appeal on the ground that the said findings are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect."

It is settled principle of law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse, as has been reiterated by the Hon'ble Supreme Court of India in paragraph-10 of the case of *Gurvachan Kaur and Others Vs. Salikram (dead) through LRS.* reported in (2010) 15 SCC 530 as under:-

"10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and the defendant and default committed by the latter in payment of rent." (emphasis supplied)

Learned counsel for the appellant could not point out any specific instance of any particular evidence being not considered. Learned counsel for the appellant also

could not point out any illegality or error in the impugned judgment and decree of the lower appellate court giving rise to any substantial question of law to be framed and decided by this Court. When trial court and the first appellate court concurrently dismissed the suit by recording all the findings of fact against the plaintiffs, then such findings of facts are binding on the High Court. This second appeal does not involve any question of law much less substantial question of law within the meaning of Section 100 of Code to enable High Court to admit the appeal on any such question much less answer it in favour of the plaintiffs.

8. In the case of Kulwant Kaur V. Gurdial Singh Mann reported in (20010 4 SCC 262 the Hon'ble Supreme Court has dealt with the limited leeway available to the High Court in second appeal. Para-34 of the said Judgment reads as under:

"34. Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-à-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication - what is required is a categorical finding on the part of the High Court as to perversity. In this context reference be had to Section 103 of the Code which reads as below:

'103. Power of High Court to determine issues of fact. - In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal.-

(a) which has not been determined by the lower appellate court or by both the court of first instance and the lower appellate court, or

(b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100.'

The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 since the issue of perversity will also come within the ambit of substantial question of law as noticed above. The legality of finding of fact cannot but be termed to be a question of law. We reiterate however, that there must be a definite finding to that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with."

Though there are plethora of case laws on this issue, the law is well settled that where there is concurrent finding of the Courts below, the High Court should not interfere with the findings of the trial court and the first appellate court on pure question of fact.

9. As discussed hereinabove, in a catena of decisions it has specifically been held by Hon'ble Supreme Court that concurrent findings of the trial court and the first appellate court on a pure question of fact should not be interfered with. Hon'ble Supreme Court, in a catena of decisions has specifically held that the strained effort made by the High Court in second appeal to arrive at a different finding is wholly unwarranted apart from being impermissible under law. It is settled principle of law that second appeal under Section 100 of the Code of Civil Procedure, 1908, cannot be admitted unless there is substantial question of law involved in it. The findings of fact recorded by the two courts below are based on proper appreciation of evidence and the materials on record. There is no perversity, illegality or irregularity in those findings. None has been brought to our notice by learned counsel for the appellant. The findings, therefore, does not require to be upset in a second appeal under Section 100 CPC. After considering all the issues involved, the trial court has rightly rejected plea of the plaintiff and the same has been affirmed by the first appellate court. The trial court as well as the first appellate court concurrently decreed the suit in favour of the defendants by recording all the findings of facts against the plaintiffs enumerated above, then in my opinion such findings of facts are binding on the High Court. The findings were neither against the pleadings nor evidence nor against any of the provisions of law. They were also not perverse of facts to the extent that no average judicial person could ever record.

The substantial question of law as formulated by the plaintiffs/ appellants/ appellants are not substantial questions of law for consideration in the instant appeal and as such, the appeal fails. In this view of the matter, this Court is of the considered opinion that this second appeal does not involve any question of law, much less substantial questions of law within the meaning of Section 100 of the Code to enable the High Court to admit the appeal on any such question.

10. In view of the foregoing discussions, no substantial question of law arises for determination in this appeal. Hence it is dismissed at admission stage itself.