
(1995) 07 PAT CK 0045

In the Patna High Court

Case No : Appeal from Appellate Decree No. 579 of 1991

Bijay Ghosh alias Bijai Kumar Ghosh and Others

APPELLANT

Vs

Syed Zeyauddin Ashraf

RESPONDENT

Date of Decision : 27-07-1995

Acts Referred:

Citation : (1995) 07 PAT CK 0045

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This is a Defendant's Second Appeal preferred u/s 100 of the CPC (for short "the Code") in a suit filed by the Plaintiff-Respondent for eviction of the Defendants-Appellants and for arrears of rent.

2. The suit was brought in respect of Holding No. 1, Circle No. 263, present Holding No. 7(b), Circle No. 265, Ward No. 37/3 situated in Chitkohra Hat, village Sorampur Sagar Dih, Police Station Gardanibagh in the District of Patna. The suit premises belonged to the Plaintiff-Respondents' mother Bibi Maimuna Khatoon, who had acquired the said suit land through a registered sale deed dated the 24th of March, 1939 and through a permanent settlement deed in lieu of dower debt dated 23.12.1947 executed by her husband late Syed Azluddin Ashraf. Thereafter she established a Hat (market) over it, known as Chitkohra-Hat situated at different plots and khatahs and the entire area of the Hat was 5.08 acres. Her name was also recorded in Register 2 (two) of the landlord and she used to pay rent for the same to the State after vesting of the Zamindari in the State of Bihar. The mother of the Plaintiff through a registered deed of gift dated 27.3.1973 gifted the suit property to the Plaintiff. Late Shambhu Ghosh father of the Defendants-Appellants was tenant in the suit premises situate on a small portion of the entire land under the ownership of the Plaintiff-Respondent at a monthly rent of Rs. 6.50 Paise and the rent was to be paid within seven days of every succeeding month. The tenancy was according to the English Calendar beginning from first day of each month and ending on the last day of the month. After the death of Shambhu Ghosh the present Appellants continued to remain in

the suit premises as tenant but there was no consent.

3. The Plaintiff-Respondent became the owner of the suit premises after execution of the registered deed of gift dated 27.3.1973 and the done came in possession of the same, but the rent was not paid by the Defendants-Appellants to the Plaintiff-Respondent. Hence the Defendants-Appellants were liable for eviction and to pay the arrears of rent.

4. The suit was contested by the present Defendants-Appellants denying that they were tenants or that the Plaintiff was owner of the suit premises, rather it was averred that their father Shambhu Ghosh had taken about 15 dhoores of land in Chitkohra Hat by oral settlement from late Syed Azizuddin, father of the Plaintiff-Respondent about 50 years back and had raised construction over it and a sum of Rs. 6/8-Annas per month was being paid to the Plaintiff. It was further averred that the Defendants-Appellants were not tenant or owner of their occupation and the suit was liable to be dismissed.

5. The trial Court dismissed the suit but the lower appellate Court has decreed the same. Against that judgment and decree the present Second Appeal has been filed by the Defendants.

6. The learned Counsel for the Appellants has urged that the Defendants-Appellants were owners of the accommodation raised by their father late Shambhu Ghosh and that there was no relationship of the landlord and tenant between the parties, and the lower appellate Court did not appreciate the evidence on record nor considered the oral evidence correctly. If there was question of appreciation of oral evidence, the principle was that when the appellate Court has to consider an issue turning on oral evidence, it must bear in mind that it does not enjoy the advantage which the trial Court had in watching demeanour of the witnesses. He leaned heavily on *Madhusudan Das Vs. Smt. Narayanibai (Deceased)* by Lrs. and Others,

7. The learned Counsel for the Plaintiff-Respondent refuted the submissions advanced on behalf of the Defendants-Appellants and contended that whether there was relationship of the landlord and tenant and whether the Appellants were owner, is a question of fact. The lower appellate Court after considering the evidence on record has held that there was relationship, of landlord and tenant between the, Plaintiff and the Defendants, and that the Defendants-Appellants were not the owners of the accommodation. In arriving at findings of fact, apart from oral evidence, documentary evidence has also been taken into account. The case of the Plaintiff-Respondent was that Bibi Maimuna Khatoon, mother of the Plaintiff had acquired lands, including the land of the suit, premises through a registered sale deed, dated 24.3.1939 and through a permanent settlement in lieu of dower debt dated 23.12.1947 executed by her husband late Syed Azizuddin Ashraf and she established a Hat known as Chitkohra Hat over the land in dispute. The suit premises was raised by mother of the Plaintiff and thereafter she gifted the same to the Plaintiff by a registered deed of gift dated 27.3.1973.

8. The documentary evidence in support of title of the Plaintiff-Respondent has been taken into account by the lower appellate Court. The question to be considered in this Second Appeal is that the transaction has been reduced to the form of documents, including the registered deed of gift dated 27.3.1973 in respect of the accommodation in dispute and the permanent settlement in lieu of dower debt dated 23.12.1947 and the registered sale deed dated 24.3.1939 and these documents of title were in favour of the Plaintiff-Respondent. At the best the interpretation of these documents of title was involved. Further, the oral evidence was excluded to prove the contents of the documents in view of Sections 91 and 92 of the Indian Evidence Act.

9. Having considered the submissions of the learned Counsel for the parties the principal question for consideration was whether the Defendants-Appellants were owners of the suit land over which the construction was situate and also whether the Plaintiff or his mother; or the Defendant-Appellants' father late Shambhu Ghose has raised the construction over the suit premises. Whether the Appellants were owners/landlord or tenant.

10. There was no documentary evidence in favour of the Defendants-Appellants, rather they claimed oral settlement of the suit premises in favour of their father late Shambhu Ghose, which was denied by the Plaintiff-Respondent. It is only oral evidence which was relied upon by the learned Counsel for the Appellants in respect of their claim to the right and title to the accommodation in dispute. The Defendants-Appellants proved their settlement only on the basis of oral settlement, which was refuted by the Plaintiff-Respondent. On behalf of the Plaintiff-Respondent it was stated that on the basis of the registered sale deed dated 24.3.1939 executed in his favour by his mother and on the basis of the deed of permanent settlement dated 23.12.1947 in lieu of dower debt the Plaintiff's mother became owner in respect of the land in dispute and she had raised construction over the same. Later on she gifted the accommodation of the suit land by a registered deed of gift dated 27.3.1973 in favour of the Plaintiff who became owner of the suit land and premises. But whether the registered sale deed, deed of permanent settlement in lieu of dower debt and the registered deed of gift being terms of grant or disposition of property have been reduced to the form of documents, no other evidence including oral evidence shall be given in proof of terms of such disposition of property except the document itself. Once these documents have been proved, no evidence of any oral agreement or settlement to contradict the documentary evidence shall be admitted with a view to contradict or vary its terms.

11. In view of Section 92 of the Indian Evidence Act the oral statement would be excluded. The fraud perpetuated in executing the document or illegality can however be proved. At the best a vendor, and not the Defendants-Appellants can prove by oral evidence that no consideration was paid and the recital to the effect in the sale deed was incorrect. (See *Most. Savitri Devi Vs. State of Bihar and Others*, and *Smt. Janki and Others Vs. Ganesh Ram and Others*,

12. To put it differently, when a transaction has been reduced to the form of a document either in accordance with requirement of law or by consent of the parties, the document itself and its terms would be regarded as only the evidence of the terms so long as that writing exists. No extrinsic evidence would be admissible to prove the terms of document or in its substitution. Section 91 of the Indian Evidence Act deals with the exclusiveness of documentary evidence. In other words, where a transaction has been reduced to writing, the existence of documents excludes all other evidence in proof of its terms. Section 92 of the Evidence Act postulates that in case the parties have voluntarily set down in writing the terms of a transaction, as in the instant case, i.e. terms of registered sale deed dated 24.3.1939, permanent settlement deed dated 23.12.1947 and the registered gift deed dated 27.7.1973, in that event, it is conclusively presumed between themselves that it was intended that the documents shall contain a full and final statement of their intention and no extrinsic evidence can be given to contradict or vary the terms of the documents. All the terms and conditions being included in the written instrument, the matter becomes inclusive. In my humble opinion Section 92 of the Evidence Act deals with conclusiveness and necessarily inclusiveness of the documentary evidence. (See *Bai Hira Devi and Others Vs. The Official Assignee of Bombay*,

13. The Lower Appellate Court has considered the entire documentary evidence as indicated above, and also the oral evidence led by the parties, but by assigning sufficient reasons the oral evidence led by the Appellants has either been excluded or rejected. The appraisal of the evidence particularly in respect of oral evidence is perfectly correct.

14. In *Madhusudan Das v. Smt. Narayani Bai* (supra) their Lordships of the Apex Court ruled that how the appreciation of the oral evidence has to be made by the appellate Court, where oral evidence has been considered by the trial Court. I have profound regards to the ratio in that case that where controversy turns on the appreciation of oral evidence in appeal and the trial Court has already considered the oral evidence in one way, the appellate Court would be slow, keeping in view that the trial court has advantage of watching the demeanour of witnesses.

15. Having gone through the judgments of the Courts below, I come to the conclusion that the findings recorded by the lower appellate Court, disbelieving the oral settlement with late Shambhu Ghose and holding him to be just a tenant and not owner or landlord are perfectly correct and there are findings of fact based on appraisal of evidence. The oral evidence led by the Defendants-Appellants have correctly been disbelieved. There is no justification for interference with those findings of fact. The answers to the questions posted are that the Appellants are not owners but tenants and the Plaintiff-Respondent is owner. The suit has correctly been decreed by the lower appellate Court.

16. After the CPC Amendment Act, 1976, the scope of Second Appeal u/s 100 of the Code is limited. Interference can be made only when substantial question of

law is involved. In view of the discussions made hereinbefore, no substantial question of law is involved in this appeal. The appeal is concluded by findings of fact, and no ground for interference with the findings of the lower appellate Court is made out.

17. In the result this Second Appeal fails and the same is dismissed. In the circumstances of the case there shall be no order as to costs.