
(2018) 05 GAU CK 0154
In the Gauhati High Court
Case No : RSA 161 of 2007

Guttu And Company Pvt. Ltd. And Ors APPELLANT
Vs
Suaid Ali RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 31

Citation : (2018) 05 GAU CK 0154

Hon'ble Judges : PRASANTA KUMAR DEKA, J

Bench : Single Bench

Advocate : G.N.Sahewalla, B.Sarma, R.Choudhury, K.Uddin, N Dhar

Final Decision : Dismissed

Judgement

1. Heard Mr.G.N.Sahewalla, learned Senior Counsel assisted by Ms.B.Sarma, learned counsel for the plaintiff appellant and Mr.N.Dhar, and

Ms.R.Choudhury, learned counsels appearing for the respondent.

2. The present appellant is a Company registered under the Companies Act, 1956 having its office at Silchar represented by its Manager, the appellant

No.2. The appellant plaintiff preferred Title Suit No 135/2000 in the Court of learned Civil Judge,(Jr.Division) No.2 at Karimganj against the present

defendant respondent for declaration of right, title and interest, recovery of possession and injunction with respect to land measuring an area of 5

bighas covered by dag No. 70 of final Khatian No. 3, Mauza Kalinagar Jungle Block No. 2 in Paragana Egarasati of the earlier district of Cachar

subsequently in the district of Karimganj and corresponding to resurvey dag No. 90 of Patta No. 80. The plaintiff became the owner of land under

Kalinagar Tea Estate by purchasing from M/s Sri Ram Tea Company who purchased the land from the earlier owner Bharat Samiti Ltd. The suit land

described in the schedule of the plaint forms a part and parcel of the said Tea Estate which is kept reserved for cultivation of tea and ancillary product and in the long past there were garden workers's quarters. The defendant respondent having no right, title and interest over the land in the month of December, 1997 constructed house on the suit land. In the settlement operation, the said land was recorded in the name of the vendor of the plaintiff appellant and in the resettlement operation in the year, 1990-91, the suit land was recorded in the name of the plaintiff appellant. The defendant respondent filed objection case No. 42 of 1990-91 before the ASO, Ramkrishnagar which was rejected and records of right was prepared in the name of the plaintiff. The defendant respondent illegally occupied the suit land and as such, the plaintiffs appellants sought for the aforesaid reliefs.

3. The case of the defendant respondent as per the written statement, is that the land covering the suit dag No. 70(old) and dag No. 90(new) of Kalinagar Jungle Block No.2 is specifically described in the written statement. The suit land covered by the said dag alongwith other lands of Kalinagar Tea Estate originally belonged to M/s Bharat Samiti Ltd and the same was sold leaving aside the land covered by the said Dag No. 70(old) to M/s Sri Ram Tea Company vide registered sale deed dated 26.7.1965. Thereafter, M/s Sri Ram Tea Company sold the aforesaid land measuring an area of 1749 bighas 14 kathas 1 chatak to the plaintiff appellant company in the year, 1974. The plaintiff company is not the owner and possessor of land covered by dag No. 70 (old). M/s Bharat Samiti Ltd gave settlement of the land mentioned in the schedule of the written statement alongwith the dag No. 70 to one Ataur Rahman , son of Murfiz Ali in the year 1965. Ataur Rahman reclaimed the land by clearing the jungle and started cultivation. He was possessing the same by growing paddy and raised his homestead thereon. In the year,1979 Ataur Rahman sold the said land including 8 bighas which he got allotment, in favour of the defendant respondent by a registered sale deed and thereafter the defendant respondent has all along in possession of the suit land since the day of purchase. Accordingly, the defendant respondent sought for dismissal of the suit.

4. On the basis of the pleadings the learned trial Court framed the following issues:

1. Is there cause of action for the suit?
2. Whether the suit is bad for defect of necessary parties ?
3. Whether the suit is properly valued and court fee is paid thereof ?
4. Whether the suit is maintainable in its present form and manner?
5. Whether the suit land is properly described in the schedule of the plaint?
6. Whether the plaintiff has right, title interest over the suit land?
7. Whether the plaintiff is entitled to reliefs as claimed for ?

5. Both sides adduced oral and documentary evidence. The plaintiff appellant exhibited the sale deed No. 652 dated 13.3.1974 by way of which it purchased the land covered by Kalinagar Tea Estate from M/s Sri Ram Tea Company. Ext. 2 is the final Khatian showing the name of M/s Bharat Samiti Ltd. which was issued after acquisition by the Government after coming into force of Assam State Acquisition of Zamindari Act, 1951. Ext. 3 is the order dated 12.6.1990 passed by the Asstt. Settlement Officer (ASO) in draft publication case No. 42/1990-91 filed by the defendant respondent thereby rejecting the claim of the defendant respondent for mutation of his name. Ext.4 is the order dated 26.9.2000 passed in appeal by the Settlement Officer filed by Md.Abdus Sukur and 23 other against the plaintiff appellant company for a direction to the ASO to record the names of the said petitioners with respect to the land covered by dag No. 70 and 89 covering in total, land measuring 1200 bighas and Ext 6 is a copy of general power of attorney. On the other hand, the defendant appellant exhibited the Ext. A, the land rent receipt dated 15.1.1965 issued by Bharat Samity Ltd in favour of Ataur Rahman, Ext.B the order dated 6.12.2000 passed by the Assam Board of Revenue in Case No. 124 RA (KJ)/ 2000 thereby staying the order dated 26.9.2000(Ext.4) passed by the Settlement Officer in Misc.Case No. 1/2000 till disposal of the appeal by the Board of Revenue.Ext.C series, the house tax receipts issued by the Karimganj Mahkuma Parishad, Ext. D is the Assam Gazette dated January 6, 1960 and Ext.D1 is the order dated 29-31/12/1959 whereby an area of 1200 bighas which was requisitioned from Ilam Estate Hikmat Roy and included later on in Kalinagar Tea Estate which was released from the requisition and Ext.E registered sale deed No. 164 dated 30.1.1986 executed by M/s Bharat Samiti Ltd in favour of the 23 numbers of purchasers including the DW 4, Md Abdul Sukkur, son of

Murfiz Ali thereby selling the land measuring 1200 bighas which was requisitioned by the Government under RC No. 2 of 57-58 and released from the requisition vide Government notification dated 29-31 December, 1959 and subsequently published in Ext.D thereby delivering the possession to the said purchasers by M/s Bharat Samiti Ltd.

6. The learned trial court after hearing the parties decreed the suit in favour of the plaintiff appellant vide judgment and decree dated 22.8.2003. The

learned trial Court took up the issue No 3 and decided the same in favour of the plaintiff appellant. The learned trial court took into the consideration

of the pleadings made in para 12 of the written statement by the defendant respondent that the land of Kalinagar Tea Estate of Kalinagar Jungle

Block No. 2 was sold to M/s Sri Ram Tea Company by way of sale deed dated 25.7.1965 by Bharat Samiti Ltd. which was subsequently sold to

plaintiff appellant in the year, 1974. The trial Court took into consideration of the deposition of PW 1 who deposed that the suit land is a part and

parcel of the Kalinagar Tea Estate and plaintiff appellant became the owner of the said Tea Estate by purchasing from Sri Ram Tea Company.

Relying on the deposition of DW 4, Abdul Sukkur in his cross-examination that dag No. 70 is recorded in the name of Manager, Kalinagar Tea Estate,

the trial Court came to the conclusion that Tauji No. A/C 17 No. 15 of Kalinagar Tea Estate is covered by dag No. 70 which the plaintiff Company

purchased and falls in Kalinagar Jungle Block Part 2 vide Ext. 1. On such appreciation of the evidence on record, the learned trial court shifted the

burden to the defendant respondent to establish that Bharat Samiti Limited did not transfer the land covered by suit dag No.70 to Sri Ram Tea

Company, the vendor of the plaintiff appellant. Thereafter it came to hold that there is no evidence on record to prove that the land covered by Dag

No. 70 was not sold to Sri Ram Tea Company by Bharat Samiti Limited. The Ext. A which is the rent paying receipt by the settlement holder, Ataur

Rahman to Bharat Samity Ltd was disbelieved by the trial Court as it was not properly sealed and signed by representative of Bharat Samiti Ltd nor it

was proved that the same was executed by the Manager, Kalinagar Tea Estate. The Ext. E which is the sale deed on the basis of which the DW 4

purchased his share of land out of total 1200 bighas of land under dag No. 70 was discarded by the learned trial Court on the ground that the same is a

certified copy and was not proved as required by law of evidence. With such cryptic discussions, the learned trial Court came to the finding that the

plaintiff appellant has the right, title and interest over the suit land and declared the other reliefs in favour of the plaintiff.

7. Being aggrieved by the said judgment and decree passed by the learned trial court, the defendant respondent preferred Title Appeal No. 101/2003

in the court of learned Civil Judge, Karimganj which was allowed by the first appellate court vide judgment and decree dated 30.7.2007, thereby

setting aside the judgment and decree of the learned trial court. Thereafter the plaintiff appellant has preferred this second appeal which was admitted

on 27.8.2008 on the following substantial questions of law:

1. Whether the appellate Court below committed a grave error of law in rejecting the sale deed in favour of appellant merely because the deed in

favour of Shiv Ram Tea Company was not exhibited when the suit land is the part and parcel of Kalinagar Tea Estate ?

(2) Whether Exhibit E being certified copy of the document having not been proved in accordance with Evidence Act could have been relied by the

appellate Court below while allowing the appeal ?

8. Mr.Sahewalla submits that the judgment and decree passed by the learned First appellate Court is not as per requirements under Order 41 Rule 31

of the Code of Civil Procedure (CPC) as the judgment lacks in any issue wise discussion. The act of rejecting the sale deed, Ext.1 by the first appellate

court and its contents only because of the reason that the sale deed between Bharat Samiti Ltd and Sri Ram Tea Company was not exhibited was not

justified. It is also submitted that there is perversity in the findings of the courts below inasmuch, as per the deposition of DW 4, the land so purchased

by him and others falls outside the land of Tea Estate on the face of the Ext.3 wherein the said land was mutated in the name of the plaintiff/appellant.

Mr.Sahewalla submits that the first appellate Court is the court of facts and duty is cast upon the said court to take into consideration the fact and

evidence on record in order to decide the dispute and/ or the issues that has arisen between the parties to the suit. Referring the judgment passed by

the first appellate court, Mr.Sahewalla submits that there is flagrant non-compliance of the procedure in which the learned first appellate court ought

to have decided the appeal and the same requires to be remanded to the first

appellate court to record its findings compatible to the provision of order

41 Rule 31 CPC. In support of his submission, Mr.Sahewalla relies on the following case laws:

1.(2016) 13 SCC 124(Union of India Vs.K.V.Lakshman)

2.(2015) 1 SCC 391(Vinod Kumar Vs Gangadhar)

3.(2014) 16 SCC 109(United Engineers and Contractors vs.Secretary to Government of Andhra Pradesh and others)

4.(2017) 4 GLT 152(Sonseni Bibi(Musstt.)& Anr. Vs Legal Heirs of Babul Boro & ors)

5.(2016) 4 GLT 1120(Piramal Kejriwal & Anr Vs Radheshyam Paul & ors)
Submitting so, Mr.Sahewalla argued that the second appeal be allowed

by setting aside the judgment and decree of the first appellate court.

9. Mr.Dhar on the other hand, submits that the plaintiff appellant Company in order to discharge the burden of prove on it ought to have proved that

the vendor of the plaintiff-appellant had the right, title and interest over the suit land so claimed by the plaintiff appellant, while transferring the land by

Sri Ram Tea Company to it. Instead of discharging the said burden in order to put the onus on the defendant respondent, the plaintiff appellant even

did not exhibit the sale deed on the strength of which the plaintiff appellant claimed that the vendor of Sri Ram Tea Company sold the land which is

the suit land under Dag No.70. The learned trial court without considering the said aspect of the matter shifted the onus to the defendant respondent

which the learned First appellate court aptly noticed the wrong appreciation of the evidence of the trial court and on its own entered into the materials

before the court including the issues and going through the issues rightly formulated the point for determination. It is the contention of Mr.Dhar that the

crux of the dispute between the parties can very well be resolved by deciding whether the Bharat Samiti Ltd sold the suit land pertaining to dag No. 70

to M/s Sri Ram Tea Company. While discussing the said point for determination the first appellate court had considered all the relevant facts, evidence

on record and gave its finding in favour of the defendant respondent thereby reversing the finding of the trial court. There is no illegality on the part of

the learned first appellate court in coming to the said findings, not to speak of non-adherence of the principles for deciding a first appeal. Accordingly

he submits that there is no merit in the second appeal and the same is liable to

be dismissed.

10. The submissions of the learned counsel of the parties are considered. The learned first appellate court while formulating the point for determination

had rightly come to the conclusion that whether the Bharat Samiti Ltd. sold the suit land covered by dag No. 70 to M/s Sri Ram Tea Company or it

was settled with the vendor of the appellant. Keeping in view the said point for determination, the learned first appellate court sieved out the admitted

facts of the case from the pleadings of the parties and the reliefs sought for by the plaintiff appellant which includes the declaration of title and

recovery of possession. It is also noticed that the defence case of the defendant respondent is that Bharat Samiti Ltd. gave jote settlement of 8 bighas

of land pertaining to dag No. 70 to Ataur Rahman from whom he claimed to purchase the suit land. On the other hand, the plea of the plaintiff

appellant is that the entire Kalinagar Tea Estate including the suit land covered by dag No. 70 was sold to M/s Sri Ram Tea Company by Bharat

Samiti Limited and thereafter, the plaintiff appellant No. 1 purchased it by a registered sale deed i.e. Ext.1 dated 13.3.1974. The learned first appellate

court noticed from the said Ext.1 that the land so purchased by the plaintiff appellant company has been described in the Schedule of Ext.1 without

there being any mention of dag numbers. The learned first appellate court also recorded the rejection of Ext.A, the rent receipt issued by officials of

the Tea Estate and thereafter, it entered into the evidence on record.

11. While appreciating the evidence of DW 1, the learned first appellate court did not consider any piece of evidence which was beyond the pleadings.

The learned first appellate court also recorded his reasoning for his non acceptance of the evidence of the defendant respondent as DW 1. However,

the learned first appellate court rightly came to the finding that the defendant respondent is possessing the suit land by considering the relief of the

plaintiff appellant for recovery of possession of the suit land. Appreciating the piece of evidence of PW 2, a garden worker that there are coconut

trees and betel nut trees over the land possessed by the defendant respondent and also considering the plea of the defendant respondent that the land

pertaining to dag No. 70 was not sold to Sri Ram Tea Company by Bharat Samiti Limited and taking in support of the said fact, the Ext.E, the sale

deed by way of which Bharat Samiti Ltd sold the land measuring 1200 bighas

which was derequisitioned in favour of Bharat Samiti Limited

whereafter the same was sold to the DW 4 alongwith 22 others, the learned first appellate court entered into the onus of proof and the degree of its

discharge by the appellant plaintiff. It has gone through the said Ext. E and came to the finding that the land included in the said Ext. E pertains to dag

No. 70 and the said deed was exhibited by DW 4. The said DW 4 exhibited the certified copy of Ext. E and the same was proved in original.

12. The learned First appellate court thereafter appreciated the evidence of the DW 4 whose name has been shown in the said Ext. E , sale deed at

Serial No. 18, as Md Abdul Sukur , son of Murfiz Ali one of the purchasers. The said DW 4 as one of the purchasers of the suit land deposed that the

defendant respondent has been possessing the suit land for 35 years and in his cross examination replied that the aforesaid land falls outside the Tea

Estate. The learned first appellate court noticed that the said sale by way of Ext. E was not challenged by the plaintiff appellant. It is also noticed that

the plaintiff appellant though exhibited its sale deed Ext. 1, by way of which the land covered by Dag No. 70 was purported to be purchased by it from

Sri Ram Tea Company is devoid of any dag numbers of the land so sold. Accordingly, it held that the burden lies upon the plaintiff appellant that

Bharat Samiti Ltd actually sold the suit land and other plots pertaining to dag No.70 to M/s Sri Ram Tea Company, the vendor of the plaintiff appellant

company and the land mentioned in Ext. 1 covers the land pertaining to dag No. 70. Appreciating the deposition of PW 1, the learned first appellate

court came to the finding that it was the claim of the plaintiff appellant that M/s Sri Ram Tea Company purchased the tea estate from Bharat Samiti

Ltd which include the land pertaining to dag No. 70. Accordingly, learned first appellate court held that the deed of transfer executed by Bharat Samiti

Limited in favour of Sri Ram Tea Company is material and indispensable to support the plea of plaintiff appellant that the suit land under Dag No.70 is

covered by land purchased by Ext. 1. Thereafter applying the principles of preponderance of probabilities, the learned first appellate court concluded

that the evidence of defendant respondent is more convincing and reliable. Discussing so the learned first appellate court came to the finding that the

learned trial court discarded the Ext. A and Ext. E wrongly and the learned first appellate court set aside the judgment and decree passed by the

learned trial court.

13. From the pleadings of the plaintiff-appellant it can be concluded that the plaintiff has the duty cast upon it to discharge the burden that the land

which the defendant respondent is possessing belongs to it and it was validly transferred to it by way of Ext. 1, in order to get the relief of declaration

of right, title and interest over the suit land of the plaintiff appellant. In addition to that the plaintiff appellant has sought for the relief of recovery of

possession. It is the Rule of law that no man can be dispossessed from a plot of land without going through the due process of law. The plaintiff

appellant in compliance of the said due process of law has come before the court in order to get back the suit land and its possession. In order to get

that relief the plaintiff appellant is bound to prove that the land which the defendant respondent is possessing belongs to it and the same devolved on it

in a manner recognized by law. The Ext. 1 is the sale deed on the strength of which the plaintiff appellant claims the suit land. It is also pleaded by the

plaintiff appellant that Bharat Samiti Limited was the original owner of the Tea Estate which was subsequently sold to Sri Ram Tea Company who in

turn sold the land by way of Ext. 1 to the plaintiff-appellant. The defendant respondent took the plea of defence that the land does not belong to the

plaintiff appellant rather, the defendant respondent took the defence plea that Bharat Samiti Ltd was the original owner of the land covered by dag

No. 90 (new) and the said M/s Bharat Samiti Ltd vide a registered sale deed sold all the parcel of land except the parcel of land covered by dag No.

70(old)/90(new) and dag No. 89 (old) to M/s Sri Ram Tea Company. The said Sri Ram Tea Company leaving aside the land covered by dag No.

70(old) and 90(new) measuring an area of 1149 bighas sold the land comprising the Kalinagar Tea Estate to plaintiff appellant in the year, 1974. As

such it was the defence raised by the defendant respondent that the plaintiff appellant is not the owner and possessor of the suit land alongwith

adjacent land covered by dag No. 70(old)/90(new). The plaintiff appellant in such a situation was bound to prove that its vendor, Sri Ram Tea

Company was competent and endowed with the right, title and interest to sell the land covered by Dag No. 70(old)/90(new) out of which the suit land

forms a part.

14. From the findings of the trial court it is clear and apparent that the learned

trial court put the burden on the defendant respondent wrongly which was correctly pointed out by the first appellate court and after pointing out the said wrong finding entered into the material facts and evidence available on record and reversed the finding of the learned trial court. As herein above stated that on the face of the defence taken by the defendant respondent and in order to discharge the principal burden of proving the right, title and interest of the plaintiff appellant over the suit land a duty was cast upon it to prove the devolution of title on the plaintiff appellant with respect to the suit land on the face of the specific plea of defence taken by the defendant-respondent. The plaintiff appellant was supposed to exhibit the sale deed which was executed by Bharat Samity Ltd in favour of Sri Ram Tea Company. Having not done so the findings of the appellate Court is proper and substantial question of law No. 1 is answered in the negative.

15. I have gone through both the judgments passed by the first appellate Court and the trial Court. Also perused the evidence on record.

“Perversity” is an expression which connotes to my opinion a measure of scrutiny which can be used while appreciating the materials on record

and in order to bracket any findings within the term “Perversity” it must show that the courts below omitted or wrongly appreciated any material

piece of evidence or has not considered any piece of evidence though the same is on record and very vital for deciding an issue involved. For instance,

the learned trial court did not consider the Ext.E, the registered sale deed on the strength of which DW 4 purchased as one of the purchasers the land

covering the suit land from Bharat Samiti Ltd in the year 1986. The said Ext. E was proved in original. The learned trial Court did not enter into it at all

nor considered the same only on the ground that it was only a certified copy and same was not proved as per law. This finding can be held to be a

“Perverse” finding inasmuch as the learned trial Court while discarding the same is seen to be revisiting the mode of proof of a particular

document Ext.E which was very much allowed by the said learned trial Court itself, to mark it as an exhibit. Once a document is allowed to be marked

as exhibit without any objection, the same cannot be rejected subsequently. If it is required to be rejected it must be rejected instantly at the time of

producing the same and marking as exhibit during the evidence stage, otherwise rejection of the said piece of evidence would affect the party

inasmuch as, had the same been rejected at the time of placing it on record, the affected party could have some alternative piece of evidence to be brought on record in lieu of said piece of evidence so rejected.

16. Mr.Sahewalla raised before this court that the judgment passed by the first appellate court lacks compliance the requirements under Order 41 Rule

31` CPC which prescribes the manner as to how the first appellate court is supposed to take up the first appeal for its disposal. Mr.Sahewalla relies on

Union of India vs.K.V.Lakshman, (2016) 13 SCC 124(supra) wherein the Honâ??ble Apex Court while prescribing the proper mode for disposal of

an appeal u/s 96 of the CPC held as follows:

â??21.It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the

litigant. The jurisdiction of the first appellate court while hearing the first appeal is very wide like that of the trial court and it is open to the appellant to

attack all findings of fact or/ and of law in first appeal. It is duty of the first appellate court to appreciate the entire evidence and may come to a

conclusion different from that of the trial Court.â??

17. In Santosh Hazari Vs Purustom Tewari(dead) reported in AIR 2001 SC 965 the Honâ??ble Apex Court circumscribing the jurisdiction of the

appellate court held that it has jurisdiction to reverse or affirm the findings of the learned trial court. First appeal is a valuable right of the parties and

unless restricted by law, the whole case is open for rehearing both on question of fact and law. The judgment of the appellate court must reflect its

conscious application of mind and record findings supported by reasons on all the issues arising alongwith the contention put forth and pressed by the

parties for decision of the appellate court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning

assigned by the learned trial court and then assign its own reasons for arriving at a different findings.

18. Other judgments and decisions relied by Mr.Sahewalla also are of similar views so far the jurisdiction of the appellate court u/s 96 CPC is

concerned.

19. From the judgment passed by the first appellate court it is found that the issues framed by the learned trial court had well been taken care of. The

first appellate court entered into the submission of the learned counsels which

culminated as the point for determination rightly. The reasonings of the trial court in passing the judgment and decree are recorded and thereafter the first appellate court on its own reasoning came to the finding as to why the sale deed between the Bharat Samiti Ltd and Sri Ram Tea Company stands as a piece of vital evidence, as hereinabove discussed. Thereafter the learned first appellate Court took into consideration the evidence adduced by the defendant respondent and gave its finding that the plaintiff appellant failed to discharge its burden in proving its case. I do not find any Perversity being crept into the judgment and decree passed by the first appellate court nor there is any non-compliance on the part of first appellate court in adhering to the principles for disposal of first appeal by the first appellate court.

20. Accordingly, the second substantial question of law is also decided in the negative. As a result this second appeal is devoid of any merit and same is dismissed without cost.

21. Send back the LCR.