

(1999) 05 GAU CK 0019
In the Gauhati High Court
Case No : Second Appeal No. 3 of 1992

Ingudam Lukhoi Singh and Another	Vs	APPELLANT
Ingudam Tomba Singh and Others		RESPONDENT

Date of Decision : 25-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(3), 100(5)
Manipur Municipalities Act, 1976 — Section 196, 196(1)

Citation : (1999) 3 GLT 272

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : Mr. H. Manglem, for the Appellant; Mr. A. Nilamani Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. I have heard Mr. H. Manglem, learned counsel for the appellants as well as Mr. A. Nilamani, learned senior counsel for the contesting respondents. None appeared for the respondent No.8 Executive Officer, Imphal Municipality. I have also considered the records of the case.

2. This Second Appeal is directed against the judgment and decree dated 19.6.1992 passed by the learned Additional District Judge, Manipur East, in the First Appeal No. 19/89/6 of 1989. Learned Additional District Judge decreed the original suit No. 16 of 1987 and set aside the judgment and decree dated 24.7.1989 passed by the learned Munsiff at Imphal dismissing the said suit.

3. The case of the plaintiff (respondent No. 1 in this second appeal) in brief is that his father Thangong Singh died about 15 years ago leaving him, his brother Chaoba Singh (father of defendant Nos 1 to 6) and his two sisters respondent Nos.7 and 8. Chaoba Singh died in 1986. Late Thangong Singh was a lessee in respect of Imphal Municipality shop No.2-B. After his death, the plaintiff, Chaoba Singh and defendant Nos.7 and 8 jointly inherited the said shop without partition of their respective shares. After the death of Chaoba Singh, the plaintiff and

Chaoba Singh's son defendant No. 1 jointly possessed the said shop. On 30.5.1985 the defendant No.1 asked the plaintiff not to enter the shop. On 2.6.1987 the plaintiff came to know that the defendant No. 1's father late Chaoba Singh during his life time got only his name surreptitiously recorded in place of late Thangong Singh in respect of the said shop in Municipal records vide transfer case No.9 of 1980 dated 15.7.1980 falsely claiming himself to be the sole heir of late Thangong Singh without knowledge of the plaintiff. Plaintiff then filed the above suit claiming that he is entitled to 3/4th share of the shop, his brother late Chaoba Singh's sons defendant Nos. 1 to 6 are entitled to 1/4th share and his sister defendant Nos. 7 and 8 are entitled to 1/4th share each. The plaintiff also prayed for partition of the shop amongst them.

4. The pro-defendant No. 9 Executive Officer, Imphal Municipality, did not contest. The defendant nos. 7 and 8 supported the plaintiffs case. The defendant Nos. 2, 3 and 5 did not file any written statement. Only defendant nos. 1 and 4 contested the suit by filing a written statement. According to them, late Thangong Singh possessed the shop, and after his death late Chaoba Singh alone has been in possession thereof. Chaoba Singh was not a lessee, but was merely a licensee. After his death, his son defendant no. 1 and his daughter defendant no.4 have been possessing the shop. The plaintiff is not entitled to any share thereof. The defendant nos. 1 and 4 further have contended that the shop in question is not heritable and hence there is no question of its partition and that since the plaintiff is questioning the Imphal Municipality's act of recording the name of late Chaoba Singh only in respect of the shop, the suit is barred for want of notice u/s 196 of the Manipur Municipalities Act, 1976. On the pleadings of the parties, the following issues were framed: -

1. Whether the plaintiff and the defendant Nos. 1 to 8 are the only legal heirs of late Ingudam Thangong Singh?
2. Whether the defendants Nos. 2, 3, 5 & 6 are the daughters of late Ingudam Chaoba Singh?
3. Whether the suit land is heritable one?
4. Whether the plaintiff and defendant No. 1 jointly possessed the suit land after the death of Ingudam Chaoba Singh?
5. Is there any defect of parties in the present suit?
6. Whether the suit is barred by limitation?
7. Whether the suit is not maintainable for want of notice to the defendant no.9 for filing suit against him?
8. Is there any cause of action to institute the present suit?
9. Whether the plaintiff is entitled to the reliefs claimed? If so to what extent?
5. On consideration of the evidence of the plaintiff, his two witnesses PWs 2 and

3, a certificate Ex.A(1)(1) from the Imphal Municipality that Late Thangong Singh was a licensee in respect of the shop in question, as well as the evidence of defendant no. 1 D.W.I (no other D.W. was examined), and peddler tax receipt Exhibits A-1 to A-11 issued by the Imphal municipality and after hearing the learned counsel for the parties, learned Munsiff decided issue Nos. 1, 2 and 5 in favour of the plaintiff and issue Nos. 3, 4, 6, 7, 8 and 9 in favour of the defendants and dismissed the suit.

6. On appeal, the learned Additional District Judge observed that the issue no.3 (whether the shop in question is heritable) could be resolved by the question whether late Thangong Singh was a lessee as alleged by the plaintiff or a licensee as alleged by the contesting defendant. If lessee, this issue could be answered in affirmative. Learned Additional District Judge found that the contesting defendant nos. 1 and 4 in their written statement did not specifically deny the plaintiffs averments that Late Thangong Singh was a lessee (in paragraph 3 of the written statement they only denied that late Chaoba Singh was a lessee), and that Chaoba Singh got only his name surreptitiously recorded in respect of the shop in Municipal records without knowledge of the plaintiff falsely claiming himself to be the sole heir of late Thangong Singh. The evidence of three plaintiffs witness to that effect was also not challenged by the contesting defendant nos. 1 and 4 who did not cross-examine any of the plaintiffs witnesses. Learned Additional District Judge held that late Thangong Singh was a lessee in respect of the shop and also found that the oral evidence of 3 plaintiffs witnesses that after the death of Thanglong Singh the shop was under joint possession of the plaintiff, late Chaoba Singh and defendant Nos. 7 & 8 was left undisturbed as there was no cross-examination of these witnesses from the defence side. Learned Additional District Judge further held that in the facts and circumstances, the suit is not hit by Section 196 of the Manipur Municipalities Act, 1976 for want of notice. Learned Additional District Judge set aside the impugned judgment and decree passed by the learned Munsiff and decreed plaintiffs suit by his judgment and decree dated 19.6.1992.

7. Being aggrieved by the aforesaid judgment and decree, the defendant nos. 1 and 4 have come up before this Court in this Second Appeal on the following grounds:

(i) Because, the First Appellate Court erred in law in interpreting lease and the manner of proof of lease, and as such the impugned judgment and decree deserved reversal.

(ii) Because, the First Appellate Court deliberately ignored the case law relied on by the trial Court in deciding the nature of the document Ext.A/1(1). Therefore, such omission by the first Appellate Court causes miscarriage of justice and failure of law.

(iii) Because, the First appellate Court failed to consider the importance of documents Ext.A/1 to A/11 which are Peddler Tax Receipts of the Suit Land.

Therefore, the finding that the document Ex.A/I(1) is suggestive of the existence of lease is erroneous and misconceived one.

(iv) Because, the judgment and decree of the First Appellate Court are bad in law and, therefore, liable to be reversed.

8. While admitting the appeal, by order dated 13.10.1992 this Court formulated the following substantial question of law:

"Whether the suit was not maintainable for want of notice to the Municipality u/s 196 of Municipalities Act?"

9. At the hearing of this Second Appeal, Mr. A. Nilamani, learned senior counsel for the respondents, has straneously argued that the case does not involve any substantial question of law and refers to the decision in Panchugopal Barua and others Vs. Umesh Chandra Goswami and others, wherein it has been held -

"A bare look at Section 100 CPC shows that the jurisdiction of the High Court to entertain a second appeal after the 1976 amendment is confined only to such appeals as involve a substantial question of law, specifically set out in the memorandum of appeal and formulated by the High Court ."

10. In the instant case, there is no substantial question of law set out in the Memorandum of appeal and formulated by the High Court as indicated above. The four questions of law specifically set out in the memorandum of appeal have not been formulated by this Court as substantial questions of law. And the one substantial question of law formulated by this Court has not been sent out in the memorandum of appeal. Section 100(3) CPC provides that "Memorandum of appeal shall precisely state the substantial question of law involved in the Appeal." Mr. Nilamni submits that in view of Section 100(3) CPC and the above mentioned decision of the Supreme Court, this court could not have formulated a question as substantial question of law which is not set out in the Memorandum of Appeal.

11. Be that as it may, in the facts and circumstances of the instant case, it cannot be held that the suit was not maintainable for want of notice to the Imphal Municipality u/s 196 of the Manipur Municipalities Act, 1976, and hence this substantial question of law formulated by this Court has to be answered in the negative. Although in the plaint it was prayed that the order dated 15.7.1980 in Transfer Case No. 9 of 1980 recording the name of only Chaoba Singh in place of Thangong Singh in Imphal Municipal null and void, this was not pressed in the trial, no issue was framed in this regard, no relief was claimed against Imphal municipality while decreeing the plaintiffs suit. In fact, in the plaint also Imphal Municipality has been made only a proforma defendant. Needless to say that a notice u/s 196 of the Manipur Municipalities Act, 1976 is required to be given for the benefit of the Municipality (proforma defendant no.9 Imphal Municipality) and not for the benefit of any other defendants. Imphal Municipality, however, neither in the Trial court, nor in the first appellate court and also not in this Court

has raised any objection that the suit was not maintainable for want of notice on it u/s 196 of the Act.

12. Learned counsel for the appellants contends that the respondent Nos. 1 and 4 used to occupy the shop in question and pay peddler tax in respect of the said shop under the direction of the Imphal Municipality and hence they are persons "acting under its direction" within the meaning of Section 196(1)(b) of the Act and therefore the suit was not maintainable as against them for non-service of notice on them. No such plea was taken by them in the written statement filed in the trial court nor in their Memorandum of Appeal filed in the first appellate court in this court. By no stretch of imagination they can be said to be persons acting under the direction of the Municipality as envisaged in section 196(1)(b). Such plea made at the time of hearing, the second appeal is devoid of any substance. It is true that the proviso to sub-section (5) of Section 100 CPC empowers the High Court to hear, for reasons to be recorded, the second appeal on any other substantial question of law, not formulated by it. On careful consideration, I have found no reason to hear this second appeal on any other substantial question of law. In fact, I have not found any other substantial question of law in the instant case. It has been held in *Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others*, that:

"The parameters within which a new legal plea could be permitted to be raised, are specifically stated in sub-section (5) of Section 100 CPC. Under the proviso, the Court should be "satisfied" that the case involves a "substantial question of law" and not a mere "question of law".

13. In view of what has been stated above, I find no merit in this second appeal and the same is dismissed. The impugned judgment and decree passed by the first appellate court are confirmed.

14. This court's interim order dated 13.10.1992 staying the operation of the impugned judgment and decree passed by the first appellate court stands vacated.

15. In the facts and circumstances of the case, the parties are left to bear their own costs.