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(2018) 02 GAU CK 0047

In the Gauhati High Court

Case No : RSA 93 of 2005

JANAKI DAS AND ORS — APPELLANT

Vs

SANTOSH KR DAS — RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

Transfer of Property Act, 1882, Section 28, Section 29, Section 54 - Ulterior transfer conditional on happening or not happening of specified event - Fulfilment of condition

Citation : (2018) 02 GAU CK 0047

Hon'ble Judges : Prasanta Kumar Deka

Bench : Single Bench

Advocate : G.C. Phukan, JN Sharma, A Das?SK Ghosh, SP Choudhury, D Chakraborty,?F. Ahmed.

Final Decision : Dismissed

Judgement

1. Heard Mr. G.C. Phukan, learned counsel appearing for the appellants/ defendants. Also heard Mr. SK Ghosh, learned counsel, appearing for

the sole respondent.

2. The present appellants are the defendants in T.S. No. 13/1993 in the court of the learned Civil Judge (Junior Division), Sankardev Nagar, Hojai

which was filed by the plaintiff for declaration of right, title, interest, confirmation of possession and recovery of khas possession and permanent

injunction.

3. The facts on the basis of which the plaintiff/ respondent filed the suit is that he is the owner and possessor of land measuring 1 Bigha out of total

land 1 Bigha 3 Kathas 4 Lechas covered by Dag No. 181 of Annual Patta of village Lanka Gaon Kissam under Mouza Lanka in the District of

Nagaon. In the year 1981, the plaintiff/ respondent purchased the suit land from its original possessor, Bideshi Rajput by way of registered sale

deed No. 4859 dated 5.6.1981. The possession was delivered to him by the said vendor. The plaintiff/ respondent has been possessing the land

by paying the land revenue regularly. On 25.08.1990 the defendant/ respondent Nos. 1 and 2 accompanied by some persons trespassed into the

schedule -A land of the plaintiff/ respondent and started constructing kutcha house thereby dispossessing the plaintiff/respondent from 3 Kathas out

of the schedule -A land measuring 1 Bigha. An application was filed before the learned Executive Magistrate, Sankardev Nagar for drawing up

proceeding under Section 144/ 145 of the Cr.P.C. During the pendency of the said application, the suit was preferred with the reliefs mentioned

hereinabove.

4. The defendant/ respondent Nos. 1 and 2 contested the suit by filing written statement. It is contended that the suit is not maintainable. The land,

being covered by Annual Patta cannot form the subject matter of the suit in the Civil Court for declaration of right, title and interest in favour of the

plaintiff/ respondent. The suit is bad for non-joinder of necessary parties as the Government is not made the party. The defendants/ respondents

are in exclusive possession of the suit land since long time. The plaintiff/ respondent threatened to dispossess them from the suit land. A 145

Cr.P.C. proceeding was drawn up and after trial, the possession was declared in favour of the defendants/ appellants. They denied the purchase of

the suit land by way of registered sale deed and also delivery of possession thereof. The defendants/ appellants still possess the land and as such

the suit is liable to be dismissed.

5. The learned trial court based on the pleadings framed the following issues:-

1) Is there any cause of action for the suit?

2) Whether the suit is maintainable?

3) Whether the suit is defect of parties?

4) Whether the suit is barred by limitation?

5) Whether the plaintiff has right, title over the suit land described in the schedule -A to the plaint.

6) Whether the plaintiff has been in possession over the suit land described in

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the schedule B to the plaint?

7) Whether the plaintiff was in possession of the suit land described in schedule C to the plaint and he was dispossessed therefrom by

the defendants on 25/8/90?

8) Whether the plaintiff is entitled to the decree as prayed for?

6. The parties to the suit adduced evidence and exhibited some documents. The learned trial court after hearing the parties dismissed the suit. It is

pertinent to mention that initially the suit was decreed on 08.12.1998 by the learned trial court. The present defendants/ appellants preferred

appeal and in the said appeal after setting aside the judgment and decree, the suit was remanded for fresh discussion on Issue Nos. 2 and 3 and

passing judgment and decree afresh. Thereafter the suit was dismissed vide judgment and decree dated 17.04.2001.

7. The learned trial court while deciding Issue No. 5 by considering the contents of the registered Sale Deed, Ext. 1 on the strength of which the

plaintiff/ respondent claimed his title over the suit land measuring 1 Bigha, came to the finding that the same was not a proper sale deed but an

agreement for sale. The said exhibit being a document creating right to obtain another document and the same being an agreement for sale it does

not create any interest over the suit land so far the plaintiff/ respondent is concerned. The learned trial court further decided the Issue Nos. 2 and 3

being the maintainability of the suit against the plaintiff/ respondent.

8. The learned trial court held that the Government of Assam is a necessary party in the suit land as the suit is for declaration of right, title and

interest of land covered by annual patta and pointing to Rule 1(C) of the Settlement Rules under the Assam Land and Revenue Regulation, 1886

came to the finding that the limited right of user of the possessory right of the patta holder of annual patta can be transferred and as such the

transfers are valid between the parties but subject to paramount title of the State. For the said reason, the State of Assam is necessary party and

the suit is bad for non-joinder of the State of Assam.

9. The plaintiff/ respondent preferred Title Appeal No. 19/2001 in the court of the learned Civil Judge (Senior Division), Nagaon, which was

allowed thereby decreeing the suit of the plaintiff/ respondent vide judgment and decree dated 20.12.2004. Being aggrieved, the defendants/

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appellants have preferred this second appeal which was admitted on 18.05.2005 by formulating the following substantial questions of law:-

(a) Whether a document created on a stamp paper not of requisite value prescribed for sale deed can be treated as a sale deed for

basing a decree for declaration of right, tilte and interest over the subject matter involved?

(b) Whether a mere registration of a deed gives a character to it, can be treated as a sale deed or otherwise as held by the first

Appellate Court?

(c) Whether any judgment and decree once set aside and the case may be referred to in subsequent appellate judgment and if not

whether such reference vitiate the appellate judgment of the appellate court?

(d) Whether on the basis of a claim of mere possession a court is competent to declare right, and interest over any immovable

property without the title being transferred in accordance with law?

(e) Whether any land under the prohibition of transfer by law can be legally transferred for conferring his right, title and interest over

the suit land?

10. Mr. Phukan, learned counsel for the appellants submits that the learned trial court had entered into the contents of Ext. No. 1 which is the

purported registered sale deed bearing No. 4859, dated 12.05.1981 on the strength of which the plaintiff/ respondent has claimed his right, title

and interest over the suit land. The learned trial court came to the finding that the said Ext. No. 1 is not a sale deed rather an agreement for sale

and as such the first appellate court is wrong in decreeing the suit. Pointing that the said Ext. No. 1 was registered on the stamp paper valued at

Rs. 2.25 (Rupees two and twenty five paise) only cannot be accepted to be proper in view of the Assam Amendment of the Indian Stamp Act,

1899. The mere registration of the said deed cannot transform the same to be a valid registered sale deed by giving go bye to the contents made

therein Ext. 1.

11. The discussion that the learned trial court once decreed the suit of the plaintiff/ respondent cannot be taken into consideration by the first

appellate court while passing the judgment and decree. The possession of the plaintiff/ respondent though started from the year 1981 and the same

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of defendants/ appellants being from the year 1984, such long duration of possession cannot confirm right, title and interest on the plaintiff/

respondent on the suit land, Mr. Phukan submits so because of the fact that the defendants/ appellants also based their claim of right, title on the

basis of sale deeds i.e. Ext. ''Ka'', ''Kha'' and ''Ga'' respectively bearing registration Nos. 195, dated 08.01.1981, 7287 dated 29.06.1984 and

2169 dated 22.02.1985 respectively.

12. Countering the submission of Mr. Phukan, Mr. Ghosh the learned counsel for the respondent submits that under no stretch of imagination the

Ext. 1 can be said to be an agreement for sale when there is a specific intention of the vendor to transfer the suit land measuring 1 Bigha to the

plaintiff/ respondent. The plaintiff/ respondent has claimed his right, title and interest on the strength of Ext. 1 on the basis of which he entered into

the possession of the suit land lawfully on being delivered possession by his vendor and as such he is entitled to get his declaration of right, title and

interest to whatever limited right of user of possession is prescribed under the Assam Land and Revenue Regulations 1886 and not beyond that.

The said right of user of possession itself goes to show that he is entitled for that title arising out of the right of possession as prescribed by the

Assam Land and Revenue Regulation Act, 1886.

13. Countering the submission on the deficit stamp duty, Mr. Ghosh submits that the court never came into such finding and mere stating that the

stamp duty is not paid as per the requirement of the Assam Amendment of the Indian Stamp Act cannot debar the plaintiff/ respondent to exhibit

the registered sale deed as an admissible piece of evidence. Accordingly, Mr. Ghosh submits that there is no merit at all in the second appeal and

the substantial questions of law formulated are to be decided against the appellant.

14. Considered the submissions of the learned counsels for the parties to this appeal. Perused the case record, including Ext. No. 1 and its

contents. Admittedly, the suit land is covered by Annual Patta No. 121. The same stood in the name of Bideshi Rajput who executed the Ext. 1

thereby transferring the land measuring 1 Bigha out of total land measuring 1 Bigha 3 Kathas 4 Lechas covered by the said Annual Patta. The said

Ext. No. 1 is specific to the effect that the said vendor, Bideshi Rajput on having

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received Rs. 2,000.00 (Rupees two thousand) as the purchase

money delivered possession to the plaintiff/ respondent. The vendor promised to do whatever is required in order to convert the said annual patta

to kheraj periodic patta and he also promised that if necessary he would execute fresh deed and no one could object to such acts voluntarily

carried by him. The learned trial court considered the said contents and accordingly held that the said Ext. No. 1 is not a sale deed but an

agreement for sale.

15. Mr. Phukan as aforesaid has submitted that the first appellate court did not interprete or gone into the contents of the said Ext. 1 and declared

the right, title and interest in favour of the plaintiff/ respondent. The contention that the said Ext. 1 was not executed on the stamp papers against

the requisite value prescribed for sale deed and the same is hit by the provision of the Indian Stamp Act for which the same cannot be treated as a

sale deed on the strength of which declaration of right, title and interest over the subject matter could be granted in favour of the plaintiff/

respondent cannot be accepted.

16. From the perusal of Ext. 1, this court finds that the said Ext. 1 had to be written in such a manner fearing that there is a bar in selling the land

covered by Annual Patta and that is why instead of expressing the actual intent of sale, it is written that the vendor on acceptance of Rs. 2,000.00

had delivered possession of suit land. The intent and purpose of execution of the said Ext. 1 is clear that the vendor intended to sell the said land.

Such intention is sufficient to form a valid contract inasmuch as under Section 13 of the Indian Contract Act, 1872, stipulates that two or more

persons are said to consent when they agree upon the same thing in the same sense. Here, in this Ext. No. 1 the intention of the vendor is clear

inasmuch as ""compelling to sell the suit land but for restriction imposed by the Government"" he had to execute the Ext. 1 by making the other

promises as hereinabove stated. On the other hand, the plaintiff/ respondent as the purchaser agreed to purchase the same at a consideration of

Rs. 2,000.00 (Rupees two thousand) the suit land which is clearly defined in the schedule of Ext. 1. There is no bar or any prohibition for transfer

of annual patta land and such sale can be enforced against the transferor as well as his heirs and upon such transfer the transferee acquires a good

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title even when the land is converted to periodic patta in the name of the vendor transferor. By way of the said transfer, the purchaser i.e. the

plaintiff/ respondent here is endowed with the limited right of the user of the suit land on the date of sale, which the vendor was enjoying on the

strength of the annual patta.

17. In Jainur Ali and Ors Vs. Mt. Chafina Bibi and Ors, reported in AIR 1951 Gau-20, a Division Bench of this Court while defining the derivative

right of transferee of annual patta land from the transferor vendor held as follows:-

8 The suit in so far it related to title to the property was between the transferor defendant 1 and the transferee plaintiff. It is not

disputed that defendant 1 had received consideration of Rs. 8650 from the plaintiff for the sale of the property to the latter. In a suit

between a transferor and a transferee arising out of a sale of the property held by the transferor on annual patta from Government, the

right of the parties to the sale are governed by the T.P. Act in the absence of a statutory provision prohibiting transfer. Section 11,

Assam Land and Revenue Regulation, says:

A settlement-holder, who is not a land-holder, shall have no rights in the land held by him beyond such as are expressed in this

settlement lease.

The settlement lease is not before us. The learned advocate for the appellant has, however, relied upon Rule 1(c) of the Rules framed

under the Land and Revenue Regulation, which says:

An annual lease means a lease granted for one year only and confers no right in the soil beyond a right for user for the year for which

it is given. It confers no right of transfer, or of inheritance beyond the year of issue, or of subletting.

9. It is clear that Rule 1(c) does not prohibit transfer of annual pattas. Indeed, it permits transfers but transfers are limited in their

duration to the period covered by the annual patta. The correct interpretation, in our view, of Section 11 and Rule 1 (c) framed under

the Assam Land and Revenue Regulation is that when an annual patta holder purports to transfer his ownership in such land for

consideration, the transferee takes a good title to the property subject only to

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the paramount title of the Government, that is to say, if

the Government so chooses it may, at the expiry of the period of the annual patta, refuse to grant annual patta to the transferee. That

however, is a matter between the Government and the transferee and not a matter between a transferor and transferee"".

18. From the aforesaid decision, it can be inferred that the plaintiff/ respondent acquired whatever right possessed by the vendor and he entitled for

declaration of that much of limited right, title and interest so acquired by Ext. 1 and for that purpose, the Government is not a necessary party to a

suit inasmuch as the unfettered right lies with the Government as per Rule 1 (c) of the Rules framed under the Assam Land and Revenue

Regulation. The defendants/ appellants had not brought on record as to the requisite value prescribed for sale and the requisite value of the stamp

papers prescribed for sale deed against a total sale consideration of Rs. 2,000.00 on record by producing cogent evidence nor it was pleaded in

the written statement. The stamp duty is required and the same is to be checked by the officials of the office of the Sub-Registrar and if there is

deficit stamp duty, a responsibility is cast upon the said officials to point out the same and supplement the deficit stamp duty. The learned trial court

did not disallow the plaintiff/ respondent to exhibit the registered sale deed as Ext. No. 1. If the discussions made hereinabove is considered, the

substantial question of law No. (a) shall have to be decided against the defendants/ appellants. The Ext. 1 is a registered deed under the

Registration Act 1908. Section 54 of the Transfer of Property Act requires registration of the sale deed mandatory in order to be a valid sale and

for transfer of the title from the vendor to purchaser. The Indian Stamp Act though has a role to play so far the evidentiary value of the document is

concerned but Sections 28/ 29 of the Registration Act, 1908 prescribes the manner in which the registration of document is to be carried out.

Section 54 of the Transfer of Property Act stipulates that the valid sale deed must be registered. Under such circumstances, the document i.e. Ext.

1 satisfies the ingredients required for valid sale inasmuch as the provision of Section 54 of the Transfer of Property Act is applicable in the transfer

of land covered by annual patta. In the event of any deficit in the stamp duty, the said instrument is inadmissible in evidence which, however, can be

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rectified as stipulated under Section 35 of the Indian Stamp Act, 1899. From the said discussion, the said substantial question of law No. (a) is

decided against the appellant. Further the registration of deed itself is sufficient to treat the said deed as a valid sale deed within Section 54 of the

Transfer of Property Act and as such the substantial question of law No. (b) is decided in the affirmative.

19. In the present case in hand, the title which is of course limited in nature as hereinabove discussed, the transfer of the suit land with limited right

has lawfully taken place from the vendor to the plaintiff/ respondent. As such the substantial question of law No. (d) is accordingly decided in the

affirmative inasmuch as the claim of the plaintiff/ respondent''s possession is on the basis of the declaration of the right, title and interest over the suit

property, which of course is limited in nature.

20. There is no specific bar nor any prohibition to transfer any annual patta land subject to the limited right of user and as such the substantial

question of law No. (e) has no substantial bearing on the interest of the parties to the suit. Regarding the substantial question of law No. (c), there

is no reference to any judgment and decree which was set aside except the discussion of the First Appellate Court that the judgment and decree

passed by the trial court initially was set aside and remanded back for fresh discussion and for fresh judgment. That cannot be the basis of the

substantial question of law and as such there does not arise any question of vitiation of the judgment and decree passed by the learned first

appellate court.

21. Accordingly, this second appeal has got no merit and the same is dismissed. No order as to the costs.

22. Send back the LCR.

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