
(2004) 04 GAU CK 0006

In the Gauhati High Court

Case No : Letters Patent Appeal Nos. 1 (SH) and 2 (SH) of 1994

Jyotindra Bhattacharjee

APPELLANT

Vs

Sona Bala Bora and others

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Contract Act, 1872 — Section 12, 12
Specific Relief Act, 1963 — Section 34, 34

Citation : AIR 2005 Guw 12 : (2005) 3 GLR 187

Hon'ble Judges : P. P. NAOLEKAR, J and A. H. SAIKIA, J

Bench : Division Bench

Advocate : B. C. Das, D. Mazumdar and S. Saikia, Advocates R. P. Sarma and B. Chakraborty, Advocate, Advocates appearing for Parties

Judgement

Saikia, J.

1. Both the appellant and respondents instituted two Title Suits against each other in the Court of District Judge/Additional Deputy Commissioner, Shillong claiming their respective right, title and interest over the same plot of land with three houses standing thereon i.e. suit land in question. The appellant filed Title Suit being T. S. No. 3(H)/78 against the respondents for declaration of right, title and interest, as absolute owner in the suit property

and also for recovery of vacant possession by evicting the respondents therefrom as well as mesne profit. On the other hand, the respondents as plaintiff Nos. 1 to 5 instituted the suit being T. S. No. 12(H)/79 praying for declaration that (1) the predecessor in interest, Late Bhagirath Bora, the vendor of the appellant, had no absolute right, title and interest over the suit property even though allotment was given in his name, (2) the Sale Deed executed by him vide Sale Deed dated 21977 was illegal and void, (3) Late Bora, arrayed as defendant No. 1, was bound by compromise agreement dated 10677 and (4) the respondents/plaintiffs had preferential right of purchase.

2. The brief facts, as have been noticed from the pleadings of the rival parties in both the suits and not being in dispute, are that Late Bora took settlement of the suit land, being plot No. 31 with an area of 176 acres, at Oackland, Shillong from the Govt. and Patta No. 15 dated 28875 was issued in his favour. He constructed houses thereon by investing his own money and taking from the Government. He was living on a cottage in the northern portion of the land with his family i.e., respondents being his wife and children. He, being a Hindu governed by the Dayabhaga School, was the absolute owner of the suit property. On 21977, the appellant purchased the suit land by a registered deed of sale for consideration of Rs. 69,000/-. After execution of such sale, the vendor on vacating the houses in question, delivered the vacant possession to the appellant but the respondents, being wife, sons and daughters of vendor Late Bora, objected to such sale and picked up quarrel with them who were residing thereon, they did not join the vendor in giving the delivery of possession of the suit property for which the appellant could not get possession of any part of the suit premises. However, the competent authority i.e., Deputy Commissioner, East Khasi Hills by his order dated 241077 allowed the mutation in favour of the appellant in Mutation Case No. 99/77. Thereafter, by dint of Sale Deed as well as mutation order, the appellant got Holding No. 85 on the said premises from Shillong Municipality Board.

3. On the basis of the admitted factual matrix as noted above, the plaintiff filed, Title Suit being T.S. No. 3(H)/78 praying for the relief as already mentioned hereinabove and the same was resisted by the respondents by filing written statement. The respondents in their Title Suit No. 12(H)/79, reiterating the averments made in the written statement submitted in the Title Suit No. 3(H)/78, claimed that though the Patta was granted in the name of Late Bhagirath Bora, the respondents being his wife and children, made substantial contribution in terms of cash, materials and labour towards the construction of houses in question and as such, they being coowners and having equal right over the suit property, had also right, title and interest over the same and Late Bora alone did not acquire any absolute right, title or ownership over the suit property for which he lacked any legal right to transfer the same to the appellant to the exclusion of the respondents. They also averred that soon after his retirement on 1968 Late Bora, being husband and father of the respondents, did not take any interest in the family and used to pick up quarrel with the family members off and on. He began to suffer mentally and behaved in an abnormal manner. In the year 1972/73, the mental condition of Late Bhagirath Bora further deteriorated and in the month of June, 1977, he lost his balance of mind and became so much quarrelsome that he even initiated a proceeding under Section 107, Cr. P.C. against the respondents. But somehow the said proceeding ended in a compromise to the effect that if he wanted to sell the suit property, the first offer would be given to the respondents but in fact he sold the property collusively and fraudulently to the appellant. In view of such factual background, the respondents claimed in their Title Suit that the vendor of the appellant, Late Bora

had no absolute title and possession over the suit land and at that relevant time he had no saleable right and Late Bora was bound by the terms of the compromise effected between them on 10677 for which the respondents had preferential right and also the right of preemption in the purchase of the suit property.

4. The trial Court took up both the title suits together for hearing. On perusal of the rival pleadings of the parties, the Court framed as many as seven issues. Concentrating itself only on one broad issue as to whether on the evidence the plaintiff i.e., the appellant, in Title Suit No. 3(H) 78 was entitled to get the suit property, the learned

District Judge, by his judgment and order dated 12785 came to the finding that the mutation granted in favour of the appellant was without possession. It may be mentioned herein that the trial Court did not discuss or appreciate the evidence led by the parties nor recorded findings on different issues framed by it. Accordingly, the trial Court dismissed the Title Suit No. 3(H)/78 filed by the appellant ordering that he should get back his entire amount of Rs. 69,000/ paid as consideration of the sale of the suit property which would be refunded by the respondent No. 1, Mrs. Sonabala Bora within a period of six months from the date of the judgment failing which the appellant should be entitled to realize the same as money decree.

5. Two appeals being FA No. 2(SH)86 (74/85) and FA No. 6(SH)88 (75/85) were preferred by the appellant against the common judgment and order dated 12785 passed by the learned District Judge, Shillong above mentioned before this Court. On consideration of the submission of the learned Counsel for the parties, the learned single Judge formulated three points for determination of the matter. Those were :

(1) Whether the Bhagirath Bora respondent No. 6 was the sole owner of the suit property and had saleable right, title over the property.

(2) Whether at the time of execution of the registered sale deed the respondent No. 6 was not mentally sound and whether execution of the sale deed conferred right, title and interest to the appellant.

(3) Whether the appellant obtained possession of the property.

6. As regards Point No. 1, taking into consideration the testimony of P.W.1, the appellant himself, P.W.2, P.W.3 and D.W.1, respondent No. 1 herein, in T.S. No. 3(H)/78 preferred by the appellant and P.W.1 who was examined as D.W.1 in the said Suit No. 3(H)/78, P.W.2 and P.W.3 in Title Suit No. 12(H)/78, the Court found that the land was actually settled for the welfare of the family though it remained in the name of Late Bora and hence it could not be said that Late Bora alone had right, title and interest over the property. Further, it was held that taking the preponderance of the evidence, the houses standing on the land were constructed with the substantial contribution of the respondents especially, the

respondent Nos. 1 and 2. Hence it was held that since Late Bora was not the sole owner of the property, he alone could not transfer the entire suit land to the appellant and as such the appellant had no right to sue.

7. So far Point No. 2 is concerned, the learned single Judge held that Late Bora was not mentally sound at the time of execution of the Sale Deed and therefore, Sale Deed executed by him, did not confer any right, title and interest on the appellant. In order to arrive at the decision of mental unsoundness of the appellant, the learned single Judge in para 15 of the impugned judgment observed "On the other hand there is some oral evidence in favour of the respondents to indicate that Late Bora was suffering from mental imbalance, the conduct of late Bora itself indicates that he was not a normal person in view of the fact that he instituted a case against his wife and children, picked up quarrel with the members of family, remained away from the house for a long period and transferred the entire property by way of sale rendering the members of the family homeless. These are few indications of improper mental condition. Of course, merely because a person instituted a case against wife and children or remained away from his house cannot be said to be indications of unsound mind. But if all these are taken together will surely indicate that Late Bora was not mentally sound at the time of execution of the sale deed and, therefore, the sale deed executed by him did not confer any right, title and interest on the appellant."

8. In discussing Point No. 3, the learned single Judge simply held that since the appellant was not able to show by adducing proper evidence that Late Bora could deliver the entire property, the appellant at no point of time occupied the suit property.

9. In view of the above finding, the learned single Judge by his judgment and order dated 3394 dismissed both the appeals affirming the judgment of the trial Court.

10. Being aggrieved by the aforesaid judgment and order, these two Letters Patent Appeals have been preferred by the appellant.

11. Heard Mr. B.C. Das, learned counsel for the appellant and Mr. R. P. Sarma, learned counsel appearing for the respondents.

12. From the extensive arguments so advanced by the learned counsel for the rival parties, it appears that the entire matter revolves around two issues : (1) whether the respondents had also acquired right, title and interest in respect of the suit land along with Late Bora when concededly the suit land was settled with Late Bora by the Govt. granting him Patta which was, after the sale to the appellant, endorsed in the name of the appellant as proved by Exbt. 5 and (2). Whether Late Bora was mentally unsound at the time of execution of the sale deed.

13. Keeping these two cardinal issues in mind, now let us note the arguments

canvassed on behalf of the contesting parties.

14. Assailing the impugned judgment, Mr. Das, learned counsel for the appellant, has strenuously argued that the learned single Judge went wrong in holding that the vendor of the appellant, Late Bora, was not the sole owner of the suit property and he was not mentally sound at the time of execution of the Sale Deed. He has pressed into service two arguments—firstly, according to him, under the law it is the Patta which confers upon the holder with a permanent heritable and transferable right of the use and occupancy in land. When Late Bora acquired his ownership by dint of duly registered Sale Deed, no documentary evidence was produced by the respondents to show that they also acquired joint title to the suit land. To substantiate these submissions, Mr. Das has relied on a decision of this Court reported in 1998 (2) GLJ 527 (*Smt Amiya Bala Dutta v. Mukul Adhikari*). In the said case, this Court held that the Patta holder is deemed to be the land holder and has the permanent, heritable and transferable right of use and occupancy. Therefore, his contention is that the respondents at no circumstances can put their claim of right and title over the suit land, though, assuming but not admitting, they had their substantial contribution in acquiring the land and subsequent construction of houses thereon. Arguing his second point, Mr. Das, learned counsel for the appellant, has submitted that there was no pleadings to the effect that at the time of execution of the Sale Deed, Late Bora was suffering from mental unsoundness. It is submitted that it was the burden of the respondents and not of the appellant to establish that at the relevant time when the Sale Deed was executed, Late Bora was of unsound mind but the learned single Judge committed grave error of law and on facts placing the burden upon the appellant to establish the factum that the vendor was mentally sound at the time of execution of the Sale Deed. Referring to Section 12 of the Contract Act, 1872 (hereinafter called as the Act), Mr. Das has argued that a person is said to be of unsound mind if, he, is, at the time of making any contract, not capable of understanding it and of forming a rational judgment as to its effect upon his interests. According to him, when the Deed of Compromise was effected between Late Bora and respondents on 10/6/77, after the withdrawal of the criminal proceeding under Section 107, Cr.P.C. initiated by the vendor of the appellant against the respondents upon which much reliance has been placed by the respondents, they themselves had admitted the fact that Late Bora was of sound mind as they prayed for a declaration in their T.S. No. 12(H)/78 to the effect that Late Bora was bound by the said Compromise Deed and as such the validity of the Sale Deed executed on 21/9/77, cannot be questioned on the ground of unsound mind of Late Bora.

15. On the point of unsoundness of mind under Section 12 of the Act, Mr. Das has taken us through two judgments namely, (1) *Tilak Chand Charan Das v. Mahandu* reported in AIR 1933 Lahore 458 and (2) *Kanhaiyalal v. Harsing Laxman Wanjari* reported in AIR 1944 Nagpur 232. In *Tilak Chands* case (*supra*), it was observed that the onus of proving unsoundness at the time of execution of the document was on a person who challenged the validity of the documents

when in Kanhaiyalals case (supra), it was held that for the purpose of Section 12 of the Act, the test of unsoundness of mind was whether the person was incapable of understanding the business concerned and its implications and mere weakness of mind was not sufficient.

16. Mr. Sarma, learned counsel appearing on behalf of the respondents, has resisted the contentions of learned counsel for the appellant claiming that the learned single Judge was absolutely correct and right in holding that Late Bhagirath Bora was not the absolute owner because the respondents being the wife and children of Late Bora, had

joint interest in the suit property wherein they had their substantial contribution on the construction of the houses over the suit land and being the members of the Hindu family, they became cosharers of the suit property. That apart, Late Bora, was not mentally sound during the relevant period as well as at the time of execution of the Sale Deed. The said factum was well proved by his erratic behaviour and the quarrelsome attitude which led to the institution of criminal proceeding under Section 107, Cr.P.C. against them that was culminated by the execution of the Compromise Deed which was not disputed by the appellant. Heavily relying on the Compromise Deed executed on 10677, Mr. Sarma has forcefully contended that in the said Compromise Deed in one of the clauses i.e., Clause 3(i) Late Bora, being the first party, categorically agreed that he would make a Gift Deed of the house and land on which house stood and in which the respondent, being the second party in the said compromise Deed, resided, in favour of respondent No. 1 i.e., Smt. Sonabala Bora and therefore, a right of cosharers had very much accrued in favour of the respondents.

17. At this stage, Mr. Sarma has faintly argued that being the cosharers of the property in question, the respondent had right of preemption over the same. It is also argued by Mr. Sarma that the instant suit filed by the appellant before the trial Court was hit by Order 23, Rule 1(4), CPC though admittedly the said point was not raised either before the trial Court or the learned single Judge. Referring to the deposition of the appellant, P.W.1 in T.S. No. 3(H)/78, Mr. Sarma has submitted that the appellant had categorically admitted that he filed four successive suits before the learned Munsiff on the same subjectmatter and on the same cause of action seeking the same relief and all those four suits were dismissed on withdrawal as he did not take any interest and on this count alone by attraction of Order 23, Rule 1(4), C.P.C., the appellant was precluded from instituting the present Title Suit in respect of such subjectmatter. Much reliance has been placed on the following judicial decisions :

(1) Smt. Nirmala v. Hari Singh reported in AIR 2001 Himachal Pradesh 1.

(2) M/s. Goyal MG Gases Ltd. v. M/s. Punjab Wireless Systems Ltd. reported in AIR 2002 Delhi 159.

18. In the above cited cases it was held that once the suit was withdrawn the plaintiff was debarred from filing subsequent suit on the same cause of action in

respect of the same property. According to Mr. Sarma since the property and cause of action were same in those earlier four suits, the filing of the present suit was hit by Order 23, Rule 1(4), CPC.

19. We have carefully perused the impugned judgment rendered by learned single Judge and materials available on record including the rival pleadings of the parties in both the Title Suits and the relevant evidence of the parties. It appears that the learned single Judge was wrong and incorrect in holding that the vendor of the appellant Late Bora was not the sole owner of the suit property. It is nobodys case that the land in question was not settled with Late Bora. Admittedly, after settlement of the land by the Govt. a Pata being Patta No. 15 was issued in favour of Late Bora in respect of the suit land. Once, Patta has been issued, applying the ratio of the *Amiya Bala Duttas* case (*supra*), it can be safely held that Late Bora acquired right of ownership over the suit land hence he had permanent, heritable and transferable right of use and occupancy over the same. It was also admitted that the respondents could not prove any such title by proving any documentary evidence. Mere substantial contribution in the construction of the house, not being supported by any reliable evidence oral or documentary, did not confer any right upon the respondents over the suit property. Even Compromise Deed which was executed by the parties and which was also heavily relied upon by the respondents, manifestly goes to prove that the Late Bora was the actual owner. This would be better clarified if we have a cursory look into the Compromise Deed dated 10677 which read as under :

"1. The Second Party is the dear and near relations of the First Party being wife and sons of the First Party.

2. The present complaint arises out of alleged proposed sale of houses owned by the First Party where in one of the houses the Second party along with the First Party resides.

3. The First Party now proposes to withdraw the present complaint preferred against the Second party as the matter has since been settled and compromised

between them to keep family peace and prestige on the following terms and conditions :

(i) the First Party owns three separate houses situated in the same compound. The First Party shall make a deed of gift of the house and land on which the house and in which the Second Party now resides, in favour of Smt. Sonabala Bora wife of the First Party.

(ii) The aforesaid Deed of Gift mentioned in the foregoing paragraphs shall be executed and registered at the SubRegistrars office Shilong simultaneously at the time when the First Party sells the other two houses to the purchasers by executing Sale Deed in the SubRegistrars Office, Shilong.

(iii) The First Party agrees that a cement brick wall at his own expense shall be constructed for identification of proper boundary separating the other two houses

which are proposed to be sold to him. Also the First Party agrees to build and construct at his own expenses a sanitary latrine for the house which is given as a gift to his wife Smt. Sonabala Bora as mentioned in para (i).

(iv) The first party shall open a Saving Bank Account of Rs. 10,000/ in the name of his wife Smt. Sonabala Bora to be operated by her in the State Bank of India, Shilong, from the sale proceeds of the two houses received by him, she will be at liberty to utilise the same for the education of her son and welfare for her children and family.

(v) The Second Party, have agreed and shall not put any hindrance whatsoever in sale of the two houses by the First Party to the Purchase of his own choice. And the Second Party shall give vacant possession of the two house to be sold to the First Party on or before 20th June, 1977 from the tenants now occupying the two houses."

20. From the terms and conditions mentioned in the above Compromise Agreement, one gets a clear indication that the respondents had admitted the ownership of Late Bora over the suit land. In view of the same, there is no hesitation for us to hold that Late Bora was the rightful owner of the property in question and as such he had a saleable right over the property in order to execute the Sale Deed in favour of the appellant. That being so, the question of declaring right and title over the suit premises in favour of the respondents does not arise at all.

21. Next question is whether Late Bora had suffered from mental sickness at the time of execution of the Sale Deed. On this point also the learned single Judge committed an error of law in holding that burden to establish that Late Bora was a person of sound mind at the time of execution of the Sale Deed lied upon the appellant. It is settled law that onus of proving of unsoundness of mind of a person always rests upon him who alleges such state of mind of person. Therefore, we are disinclined to accept the findings recorded by the learned single Judge as has been noticed in para 7 of this judgment. How the facts that the instituted a case against his wife and children, picked up quarrels with the members of the family, remained away from the house for a long period and transferred the entire property by way of sale rendering the members of the family homeless, could indicate that Late Bora was not a normal person. More importantly, when there was no pleadings either in the written statement filed by respondents in T.S. No. 3(H)/78 or in the plaint filed by them in T.S. 12(H)/79 as regards the mental position of Late Bora at the time of execution of the Sale Deed, the learned single Judge was absolutely wrong in taking the view that if all those indications were taken together that would surely indicate that Late Bora was not mentally sound at the time of execution of the Sale Deed and the Sale Deed executed by him did not confer any right, right, title and interest on the appellant although it was observed therein that of course, merely because a person instituted a case against wife and children or remained away from his house, could not be said to be indications of unsound mind. Pertinent it to note

that there is nothing on record to prove that Late Bora was over medically examined to support the contention of the respondents that he was of unsound mind.

22. With regard to the submission to the effect that the appellant was precluded from filing the Title Suit No. 3(H)/78 put forward on behalf of the respondents, this Court does not find any materials available on record to substantiate such claim. The records including the rival pleadings do not reveal withdrawal or abandonment of any such suit prior to institution of Title Suit No. 3(11)/78 except the statement of the appellant made

in his deposition as referred by Mr. Sarma. That being so, we are of the view that the provision of Order 23, Rule 1(4), CPC has no applicability in the case at hand. Similarly, the plea of right of preemption taken by the respondent cannot also be approved in view of the fact that the law of preemption is not applicable in the State of Meghalaya.

23. For the foregoing reasons and discussions, we are of the firm opinion that the vendor of the appellant, Late Bora had clear and absolute right title and interest over the suit land and at the time of execution of the Sale Deed in favour of the appellant, he was a person of sound mind and thus the appellant acquired a valid title and interest over the suit land by virtue of the said Sale Deed executed by Late Bora in his favour. Consequently, the impugned judgment and order dated 3394 passed by the learned single Judge is set aside and quashed. The Title Suit No. 3(H)/78 filed by the appellant is hereby decreed and the appellant is entitled to get total relief sought in the said suit.

24. In the result, both the LPA succeed and stand allowed.

Appeal allowed.