

(1994) 03 GAU CK 0002

In the Gauhati High Court

Case No : First Appeal No. 2 (SH) of 1986 and 74 of 1985

Jyotirindra Bhattacharjee

APPELLANT

Vs

Mrs. Sona Bala Bora and Others

RESPONDENT

Date of Decision : 03-03-1994

Acts Referred:

Contract Act, 1872 — Section 12
Evidence Act, 1872 — Section 114

Citation : AIR 1994 Guw 99

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : A.C. Sarma, R. Choudhury, B.K. Das Roy, J.N. Deb Choudhury, B.P. Dutta and P. Deb, for the Appellant; H. Ahmed and M. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Baruah, J.—These two appeals arise out of a common judgment passed by the learned District Judge, Shillong in Title Suit No. 3(H) 78 and 12(H) 79. Title Suit No. 3(H) was instituted by the appellant against the respondents 1 to 4 and 6 and 3 others. Respondent No. 6 was a proforma defendant. Pro forma respondent No. 6 died during the pendency of the appeal. No steps were taken for substitution. However, all his heirs are on record and his estate is well represented --Title Suit No. 12(H)79 was instituted by respondents 1 to 5 against the pro forma respondent and the appellant --- The suit filed by the appellant was dismissed with a direction to return the sum of Rs.69,000/- by respondent No. 1 (in FA 2(SH)"86) within a period of 6 months from the date of judgment. If, however, respondent No. 1 failed to pay the amount, the appellant would be entitled to realise the money as a decree.

2. Two suits were filed by both appellants and respondents Nos. 1 to 5. Title Suit No. 3(H)78 was filed by the appellant and the Title Suit No. 12(H)79 was filed by respondents Nos. 1 to 5.

The appellant instituted the suit for a declaration of his right, title and interest in

respect of the suit property, recovery of possession and also for recovery of mesne profit etc. 1st to 5th respondents, on the other hand, filed the suit for declaration that respondent-defendant No. 1 late Bhagirath Bora had no saleable right to transfer the entire property and also for other reliefs. Both the suits relate to the same subject matter, i.e. a plot of land measuring more or less 176 acres with three residential houses standing thereon, situated at Oakland, Shillong within the European Ward of the Shillong Municipality covered by Plot No. 31 and Patta No. 15.

3. The case of the appellant in his suit. (Title Suit No. 3(H)78), inter alia, was that Bhagirath Bora was the absolute owner of the suit property and he purchased the said property at a consideration of Rs. 69,000/- and late Bhagirath Bora executed a registered deed of sale in his favour. Thus he became the absolute owner of the said property. After execution of the registered sale deed Late Bhagirath Bora delivered possession by quitting from the cottage under his occupation and gave delivery of possession of the main house which was lying vacant. However, 1st to 4th defendants picked up quarrel with late Bhagirath Bora after delivery of vacant possession of the cottage in his occupation and assaulted him. The matter was reported to the police and thereafter they illegally entered into the cottage by a back door and locked the door without legal and lawful authority. Besides they also broke open the lock put by the plaintiff-appellant in the main house and forcibly and illegally entered into the main house. The appellant further stated in his plaint that after the purchase of the property his name mutated in Mutation Case No. 99/77 vide Deputy Commissioner's order dated 24-10-77. At no point of time the respondent-defendants raised any objection to the grant of mutation in favour of the appellant even though they knew it fully. After the mutation the plaintiff's name was also entered in the assessment register of Shillong Municipality as owner of Holding No. 85 (Oakland European Ward of Shillong). The appellant further stated that the defendants Nos. 1 to 4 (respondents 1 to 4) after their wrongful entry into the cottage illegally occupied and also let out a portion of the said house on rent to respondent No. 5. The said respondents thereafter, inducted defendants Nos. 6 and 7 in the main house as tenant and commenced realisation of rent. Hence he filed a suit for declaration, etc.

4. 1st to 4th defendants i.e. respondents Nos. 1 to 4 contested the suit by filing written statement. In the written statement respondents 1 to 4 disputed the claim of the appellant that Late Bhagirath Bora had absolute title and ownership or even possession of the property. Besides, they stated that the Government of Assam made settlement of the land on the application of Late Bhagirath Bora for the purpose of residence of late Bhagirath Bora and the members of his family although the Government gave patta in the name of late Bhagirath Bora. The respondents also claimed that the houses on the suit land were constructed with a substantial contribution of cash money, materials and labour from respondent No. 1 (defendant No. 4) and also some other members of the family. They further denied the averments made in the plaint to the effect that the main

house of the suit property was lying vacant. Besides, the allegations of wrongful entry were false and these false statements were made just to get recovery of the property. These respondents further stated that during the service life of late Bhagirath Bora, the husband and father of the respondents never took any interest in looking after the family matters. It was entirely left to his wife -- the 1st respondent (defendant No. 4). After his retirement from service he became abnormally detached to the family and showed signs of insanity. Always he used to pick up quarrels with the members of his family and became violent especially towards respondents Nos. 1 and 2. In 1977 Bhagirath Bora's mental condition further deteriorated. At times he remained away from his house for a long period and because of the quarrel at the instance of some interested persons a proceeding was initiated u/s 107, Cr.P.C. against the answering defendants. The said 107 proceedings, ended in compromise and there was an agreement to that effect. However, taking advantage of mental sickness the plaintiff got the sale deed registered.

5. Respondents 1 to 5 instituted a suit (Title Suit No. 12(H)79) for declaration almost reiterating what was stated in the written statement filed by respondents 1 to 4 and sought declaration that 6th respondent (Late Bhagirath Bora) had no absolute saleable right, title and interest over the property even though the allotment was given in his name and also for other reliefs. In fact the settlement was given for occupation of the entire members of the family and the house were constructed not by Late Bhagirath Bora alone but with the contribution of the respondents, namely, respondents 1 and 2. In their suit also respondents 1 to 4 reiterated that respondents No. 6 (Late Bhagirath Bora) became mentally sick incapable of deciding the matter in proper perspective. Taking the advantage of the mental sickness of the respondent No. 6, the appellant managed to get a registered sale deed in his favour in respect of the entire property including the houses standing thereon even though the said houses were constructed with the money and labour contributed by respondents mainly respondents 1 and 2. During life time respondent No. 6 Late Bhagirath Bora also filed a written statement in support of the case of the plaintiff/appellant.

6. Several issues were framed. Parties adduced evidence in both the suits in their favour. Both the suits were disposed of by dismissing the appellant's suit with a direction to the respondents to return the money. In case money was not returned there would be a decree for Rs. 69,000/- which was claimed to be paid on the basis of the registered sale deed. Hence the present appeals.

7. I have heard both sides.

8. Mr. B.P. Dutta, learned counsel for the appellant submitted that from the evidence on record the Court ought to have discarded the story of mental imbalance of pro forma respondent -- Late Bhagirath Bora and the learned District Judge was wrong in holding that the suit property was a joint property of respondents and Late Bhagirath Bora in absence of any evidence on record.

9. Mr. H. Ahmed, learned counsel for the respondents submitted that the evidence on record were in abundance to show that at the time of execution of the deed, the 6th respondent was suffering from mental sickness and even assuming that the property actually belonged to the 6th respondent, the execution of such deed would not be valid in view of the fact that the 6th respondent was suffering from mental sickness at the time of execution of the said deed.

10. In view of the submissions of the learned counsel of the parties now the points in the appeals for determination are as follows -----

(1). Whether late 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.

11. POINT NO. 1

In the suit filed by the appellants 1st to 4th defendants that is 1st to 4th respondents filed written statement. In the written statement the said respondents had taken a specific plea that late Bhagirath Bora had no absolute right to sell and transfer the suit property. Besides, in their written statement they stated that the then Government of Assam made settlement of the suit land. "For the purpose of his residence as well as for the residence of the answering defendants." They also stated, "The three houses on the suit land were constructed with substantial contributions in cash money, materials and labour from the defendants No. 4 and also from the other answering defendants". In the said suit the appellant examined 3 (three) witnesses, namely, the appellant himself as P.W. 1, Dinesh Kalita as P.W. 2 and Collina Nongsiej as P.W. 3 and the respondents examined one witness, namely, Respondent No. 1 Smt. Sonabala Bara.

In the suit filed by respondents 1 to 4 that is Title Suit No. 12(H) 79 the plaintiff examined 3 (three) witnesses, namely, Sonabala Bora -- Respondent No. 1 as P.W. 1, P.N. Bhuyan as P.W. 2 and Rajendra Natb Mahanta as P.W. 3 and the appellant examined himself as D. W. 1. In the said title suit respondents 1 to 4 took the similar plea and sought a declaration accordingly. The appellant filed a written statement. In the said written statement he stated, inter alia, that late Bhagirath Bora was the absolute owner of the property. The Government of Assam gave allotment of the land to Bhagirath Bora and thereafter issued Patta and, therefore, definitely he had the right to transfer the property by way of sale. The appellant further stated that on the strength of the sale deed he derived title. No specific issue was framed on this point. However, the parties, led

evidence to that effect and both the parties were aware of the issue and, therefore, I propose to dispose of this point even though proper issue was not framed.

12. P.W. 1 Title Suit No. 3(H)78 simply stated that he purchased the property at a valuable consideration of Rs. 69,000/- on the basis of Ext. 1 registered sale deed. He proved the signature of Late Bora in Ext. 1. Thereafter, he got his name mutated. At the time of mutation there was no objection from the side of the respondents. However, he has not made any attempt to show whether this land was given to Late Bhagirath Bora solely for his use and use of the members of his family as claimed by the respondents.

13. P.W. 2 Dinesh Kalita was the Record keeper of Shillong Municipality. He deposed regarding transfer of holding from Bhagirath Bora to the appellant. Ext. 6 is the application dated 21-9-1977 from Bhagirath Bora with endorsement. Ext. 7 is the Certificate dated 3-11-1979. Ext. 8 is the notice addressed to Bhagirath Bora. He also stated that the mutation was granted on the basis of the patta and the sale deed. However, he was absolutely silent whether notice was given to the respondents and whether any enquiry was made regarding possession. On the other hand, he specifically stated that mutation was granted on the basis of the patta and the sale deed. He further stated that respondent No. 1 filed objection. This witness had not stated anything about the ownership of the property.

P.W. 3 Collina Nongsiej proved certain documents. However, he also has not stated anything with regard to the ownership of the land. Respondent No. 1 examined herself as D.W. 1 in the said suit. In her evidence she stated that in 1951 she, her husband and other members of the family were residing in a rented house at Garikhana, Shillong. She further stated that she on coming to know that the Government of Assam was giving settlement of land to the Government employees and the members of their families she went personally to meet the then Revenue Minister, Assam and told him about their difficulties regarding accommodation due to financial constrain. As told by the Minister she advised her husband to give an application for settlement of a plot of land.

The suit land was settled and patta was issued in the name of her husband though in fact it was given to the entire family. The patta was issued in the name of her husband to enable him to take loan by mortgaging the land for construction. She further stated in her deposition that she contributed a substantial amount for construction of the house. This amount belonged to her which she received from her parents in the marriage etc. After construction of the house they shifted to the said house. Her husband retired in 1963. She used to look after the children and maintain the expenses of their education. She used to earn extra money by sewing and weaving clothes etc. After retirement of her husband their pecuniary condition further deteriorated. Accordingly, she requested her husband to agree for construction of two additional cottages in the compound with a view to letting out the same so that they could maintain their family with little comfort. She contributed some amount for construction of these

cottages also. After completion of the construction of the two cottages she rented out the cottages to the tenants and out of the income she maintained the family. Her husband never used to take interest, etc.

14. In Title Suit No. 12(H)79 the respondent No. 1 in her deposition reiterated the same story. P.W. 2 P.N. Bhuyan was a practising Advocate in Shillong. However, he did not say anything whether late Bhagirath Bora was the sole owner or not. P.W. 3 Rajendra Nath Mahanta stated that he worked with Late Bora. Late Bora had been serving in the Secretariat as Selection Grade U.D. Assistant and had been working in the Establishment Department, where P.W. 3 was a Superintendent. In 1950-51 Government decided to allot land for their employee. He and Late Bora applied for settlement of some land. In the application for allotment it was specifically mentioned that they were married. On that basis he got the settlement in Bishnupur and Late Bora got land in Dakland. They paid a small premium for the land allotted to them. He further stated that the land was settled on family consideration. Though patta was given in the name of one person, but the right of the family was also there, The loan was not sufficient for construction of the house. This witness was not at all cross-examined by the appellant regarding the manner in which settlement was given, The appellant also examined himself as D.W. 1 He reiterated the same statement as made by him in this deposition in Title No. 3(H)78. Respondent No. 1 in her evidence stated that the houses were constructed with substantial financial contribution of the respondents 1 and 2. Respondent No, 1 in her evidence further stated that the contribution financial help from her own source that is the money she received from her parents at the time of her marriage and also from her earning from sewing and weaving, etc. This fact was also not controverted by the appellant. There was no cross-examination whatsoever. One important thing which the appellant failed to do was proving of patta and the allotment order. It was the bounden duty of the appellant to prove the patta and the allotment order to show on what conditions the allotment was made. As the appellant claimed that he purchased the land from Late Bhagirath Bora at a valuable consideration he must have received all those documents. His failure to prove all those documents only show that if those documents were produced the case of the respondents would further be proved. That being so, I find that the land was actually settled for the welfare of the family though in the name of Late Bora. Therefore, it cannot be said that Late Bora alone had the right, title and interest over the property. Secondly, there is a specific averment made regarding financial contribution made by respondents 1 and 2 which has also not controverted either by adducing evidence or by proper cross-examination. Therefore, taking the preponderance of evidence I hold that the houses standing on the land were constructed with the substantial contribution of respondents Nos. 1 and 2. In view of the above, Late Bora was not the sole owner of the property and he alone could not transfer the entire land to the appellant. Accordingly, the appellant had not right to sue.

15. POINT NO. 2

In the written statement filed in Title Suit No. 3(H)78 and in the plaint in Title Suit No. 12(H)79 the respondents took the plea that at the time of execution of the deed Late Bora was suffering from mental sickness. In paragraph 16 of the written statement the respondents stated that in 1972 Late Bhagirath Bora made a will bequeathing his property to his sons and daughters. However, after a year or two the mental condition of Late Bora deteriorated and he became imbalanced in mind not knowing what he was doing. Respondents further stated in their written statement in the year 1977 the mental condition of Late Bora further deteriorated. The appellant in his deposition as P.W. 1 in Title Suit No. 3(H)78 did not make any attempt to show that on the date of sale Late Bora was mentally sound. It was his duty to make some attempt to show that at the time of execution of the deed his vendor Late Bora was mentally sound and fit to execute the deed. But from the evidence on record I find no attempt was made in this regard. The other P.Ws. examined in T.S./3(H)78 did not say anything about the mental condition of Late Bora. I find D.W. I Sons Bala Bora in her evidence specifically stated that from 1971 her husband was imbalanced in mind and in 1977 her husband instituted a criminal case u/s 107, Cr.P.C. against her and her sons and daughters which, however, ended in compromise. Besides, she stated that the transaction was done surreptitiously and fraudulently. She also denied the suggestion that her husband was not suffering from mental imbalance. In her deposition in Title Suit No. 12(H)79 she stated that two houses constructed by them were given on rent by the respondent No. 1. She was collecting rent from the year 1971 when her husband developed mental unhappiness and became disinterested. She was not cross-examined on this point. No attempt was made to show that at the time of execution of the deed the vendor of the appellant was mentally sound capable of executing the sale deed. There is no evidence -- oral or documentary from the side of the appellant to show that. On the other hand there is some oral evidence in favour of the respondents to indicate that Late Bora was suffering from mental imbalance. Besides, 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 his 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.

16. POINT NO. 3.

The appellant has not been able to show by adducing proper evidence that Late Bora could deliver the entire property. In view of the above, I hold that the appellant at no point of time occupied the suit property. I find no force in the appeals. Accordingly the appeals are dismissed and I affirm the judgment of the

learned District Judge.

17. Under the facts and circumstances of the case, I make no order as to costs.