
(2016) 03 GAU CK 0066
In the Gauhati High Court
Case No : RFA No. 3 of 2009

Lahoty Enterprise (M/s) & Ors.

APPELLANT

Vs

Assam State Warehousing Corporation & Ors.

RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Evidence Act, 1872 — Section 101

Citation : (2016) 4 GauLJ 156 : (2016) 2 GauLT 816

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : S.C. Keyal, Advocate, for the Appellant; L.P. Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Suman Shyam, J. (Oral) - Heard Mr. S.C. Keyal, learned counsel for the appellants. Also heard Mr. L.P. Sharma, learned counsel for the respondents.

2. This appeal under Section 96 of the CPC has been filed against the judgement and decree dated 19.06.2008 passed by the Court of learned Civil Judge No. 2, Kamrup, Guwahati in Title Suit No. 241/2000. dismissing the suit filed by the appellants/plaintiffs.

3. The plaintiffs' case in brief is that they are the owners of 2 (two) go-downs measuring about 15,000 sq. ft. each, situated at Village Satgaon at Guwahati. The defendants had entered as a tenant in respect of the aforesaid go-downs on condition of paying monthly rent, way back in the year 1989. Thereafter, the tenancy was renewed from time to time and finally on 10.04.1997, a fresh tenancy was created for a period of 4 (four) years with effect from 01.04.1996 to 31.03.2000 with a condition that the defendants would have a right to vacate the go-downs of the plaintiffs at any time within the contractual period by giving formal notice of two months to the landlord. The agreement of tenancy, inter alia, contained a clause prohibiting the defendants from storing any kind of salt,

jute, nitrogenous fertilisers or any other inflammable materials. It is the case of the plaintiffs that by violating the aforesaid condition contained in the tenancy agreement, the defendants had stored fertilisers, nitrogenous articles, thereby causing damage to the said two go-downs of the plaintiffs.

4. On 19.02.1990, the plaintiffs had informed the defendant No. 2 that the storage of fertilisers has caused damage to the aforesaid two go-downs of the plaintiffs leading to financial losses. The aforesaid fact was notified to the defendants by issuing subsequent communications as well. When the plaintiffs had raised objection in the aforesaid regard, the defendants had decided to vacate the plaintiffs' go-downs and on 31.08.1999 both the go-downs were finally vacated by the plaintiffs' defendants. It is, however, the case of the plaintiffs that due to storage of fertilisers in the aforementioned go-downs, the property of the plaintiffs have been substantially damaged, as a result of which the plaintiffs had to spend an amount of Rs. 4,45,000/- for repairing of each of the go-downs. As such, the plaintiffs had issued a legal notice dated 27.11.1999 calling upon the defendant no.2 to make payment of Rs. 8,90,000/- as damages and compensation for the damage caused to go-downs due to storage of nitrogenous substances along with a claim of interest @ 18% per annum on the said amount with effect from 07.09.1999 till realisation of the amount along with cost of the suit. Since the defendants had failed to respond to the said demand, hence, the plaintiffs were compelled to institute Title Suit No. 241/2000 before the Court of learned Civil Judge No. 2, Kamrup, Guwahati seeking a money decree.

5. On receipt of summons in connection with the aforesaid suit, the defendants had appeared and contested the suit by filing the written statement, inter alia, questioning the maintainability of the suit on the ground of the suit being barred by limitation; bad for nonjoinder of necessary party and for want of cause of action. The defendants have categorically denied of having caused any damage to the go-downs and on the contrary have pleaded that when the plaintiffs had raised an objection as regards storage of fertilisers in the go-downs, the defendants had taken a decision to vacate the go-downs which fact was also duly intimated to the plaintiffs by the letter dated 31.01.1999.

6. Based on the pleadings of the parties, the learned Trial Court had framed the following issues:-

I. Whether the suit is maintainable in its present form or not?

II. Whether there is any cause of action for this suit or not?

III. Whether the plaintiffs are the absolute owner/landlord of the suit land or not and whether the suit premises was let out to the defendants or not?

IV. Whether the defendants have violated the terms and conditions of the tenancy agreement executed between them or not?

V. Whether the defendants have stored in the suit premises nitrogenous

fertilisers by violating the terms and conditions of the tenancy agreement executed between them time to time since 1989 or not?

VI. Whether the defendants have damaged the suit premises to the extent of Rs. 8,90,000/- as per demand notice dated 27.11.99 of the plaintiffs or not?

VII. Whether the plaintiffs are entitled to the decree of damages and compensation from the defendants or not and whether the plaintiffs are entitled to realise the same from the defendants jointly and severally or not?

VIII. Whether the plaintiffs are entitled for a decree as prayed in the plaint or not?

IX. To what relief or reliefs, the plaintiffs are entitled?

7. During the hearing of the suit, both the parties had adduced evidence by examining one witness each besides exhibiting certain documentary evidence.

8. Upon hearing the learned counsel for the parties, the trial Court had decided the vital issues i.e. the issues no. 5 and 6 against the appellants/plaintiffs by holding that the plaintiffs had failed to establish their case by adducing cogent evidence on record.

9. Being aggrieved by the judgement and decree dated 19.06.2008 passed in Title Suit No. 241 /2000 dismissing the suit the plaintiffs as appellants, have approached this Court by filing the instant appeal.

10. Mr. Keyal, learned counsel for the appellants submits that although no vouchers were produced by the plaintiffs before the Court below as proof of their claim of having renovated/repared the go-downs on being damaged due to storage of nitrogenous fertilisers, yet, in the legal notice dated 27.11.1999, a detailed account was given as to the manner in which the go-downs were damaged and thereafter, the plaintiffs had incurred expenditure to the extent of Rs. 8,90,000/- for causing repair of the same. Prior to that, by the earlier communications also, the plaintiffs had notified to the defendants that due to storage of fertilisers in the go-downs the same had led to damage of the go-downs owned by the plaintiffs. However, despite receipt of the said communications, the defendants had neither responded to the same nor denied the claim made by the plaintiffs. Such being the position, submits Mr. Keyal, there was no further requirement for the plaintiffs to adduce evidence to prove and establish its case. According to the learned counsel for the appellants, the learned trial Court had erred in deciding the issues no. 5 and 6 against the plaintiffs, thereby dismissing the suit.

11. Mr. Sharma, learned counsel representing the defendants/respondents on the other hand, contends that it is the admitted position of fact that the plaintiffs have not produced any evidence to show that the go-downs were damaged by the defendants or that an amount of Rs. 8.90.000/-, as claimed by the plaintiffs was actually spent for repair of the go-downs. On the contrary, submits Mr.

Sharma during the cross examination of the PW-1, he has himself admitted that there was no repair carried out in the go-downs during the relevant period and that the defendants had vacated the go-downs once an objection was raised as regards storage of nitrogenous fertilisers therein. In such view of the matter, the learned trial Court was completely justified in dismissing the plaintiffs' suit and there is no scope for reversal of the said decree in the facts and circumstances of the case. 12. I have considered the submissions made by and on behalf of the learned counsels for the parties and have also perused the materials available on record. It is the undisputed position of fact that the respondents/ defendants had taken the 2 (two) aforementioned go-downs owned by the plaintiffs on rent as tenants for storing materials therein. It is also not in dispute that as per the terms and conditions of tenancy, the defendants were prohibited from storing any kind of salt, jute, nitrogenous fertilisers or any other inflammable materials in the said go-downs. However, on the scrutiny of the evidence available on record, there is nothing to show that the defendants had actually stored such materials in violation of the terms and conditions of the tenancy. On the contrary, what is evident from the testimony of the PW-1 is that when the plaintiffs had insisted on compliance of the aforesaid clause in the tenancy agreement, the defendants had decided to vacate the go-downs by issuing prior notice to the landlord. It is not in dispute that on 31.08.1999 the defendant No. 6 had informed the plaintiffs that the go-downs have been vacated completely in the presence of the representative of the plaintiffs.

13. After going through the records it can be seen that, save and except, producing copy of the legal notice dated 27.11.1999 (Ext. 24) as well as certain other communications including the Ext. 21, i.e. the letter dated 07.09.1999, the plaintiffs have not produced any evidence to show that repair work involving expenditure to the extent of Rs. 8.90,000/- has been carried out due to the damage caused on account of storage of nitrogenous fertilisers in the said go-downs by the defendants.

14. What further appears from the records is that as per the conditions contained in the agreement of tenancy, the annual repair of the go-downs was to be carried out by the lessor at his own cost as and when required. Therefore, even assuming that the plaintiffs had carried out any repair of the go-downs after the same was vacated by the defendants, it would not be sufficient to presume that such repair was not on account of annual repair and renovation of the go-downs but on account of damages caused to the property due to storage of nitrogenous fertilisers by the defendants.

15. It is the plaintiffs who had approached the Civil Court by filing the suit seeking a money decree and as such, under Section 101 of the Evidence Act, 1872, the burden to prove the facts asserted in the plaint was upon the plaintiffs. The mere fact that the defendants did not deny the claim made in the communication cannot be a ground to decree the plaintiffs suit for recovery of an amount of Rs. 8.90.000/-. As has been indicated herein before, the plaintiffs

have failed to prove and establish the facts that the go-downs had been damaged due to storage of nitrogenous fertilisers by the defendants and that an amount of Rs. 8,90,000/- had to be spent by the plaintiffs due to repair of the go-downs on account of such damages. In the absence of clear proof of the aforesaid facts based on evidence on record, there was no scope for the learned trial Court to decree the plaintiffs' suit with the reliefs prayed for.

16. In view of what has been discussed above, I do not find any illegality or infirmity in the decision rendered by the Court below as regards issue Nos. 4, 5 and 6. Consequently, it is held that the judgement and decree passed by the learned trial Court does not suffer from any illegality permitting interference by this Court. In the result, the appeal must fail and is hereby dismissed. However, having regard to the facts and circumstances of the case, there would be no order as to costs.

17. Office to send back the LCR.