

(2001) 03 GAU CK 0038
In the Gauhati High Court
Case No : FA No. 115 of 1995

Lakhan Chandra Roy and Others

APPELLANT

Vs

Bijan Das and Others

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Easements Act, 1882 — Section 63

Citation : (2001) 1 GLT 443

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : N. Chakraborty and N. Chakraborty, for the Appellant; T. Goswami, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This appeal is directed against the judgment and decree dated 21.11.94 and 28.11.94 passed respectively in Title Suit No. 27/93 by the learned Assistant District Judge, Nagaon partly decreeing the suit in so far as the title of the Plaintiff over the suit property is concerned. The prayer for eviction of the Defendants was, however, rejected on the ground that they cannot be evicted for non service of prior notice.

2. Being dissatisfied with the aforesaid judgment and decree the Plaintiffs have preferred this appeal on various grounds incorporated in the memorandum Sri N. Chakraborty, learned Counsel for the Appellants argued that the learned Trial Judge declared the title of the Plaintiffs over the suit premises, but erroneously rejected the prayer of the Plaintiffs for a decree for eviction of the Defendants on the ground that no prior notice was served. The defence case in the written statement is that they have been in possession of the suit premises for thirty-eight years on the strength of an oral gift by the mOrs. of the Plaintiffs.

3. It would appear from the pleadings on record that the title of the predecessor-in-interest of the Plaintiffs over the suit premises is not in dispute. That the suit

land originally belonged to the father of the Plaintiffs is not disputed. After the death of the Plaintiff's father, the Plaintiffs and their mOrs. became the owner of the suit property. At that time the Plaintiff No. 1 was minor and his mOrs. had to invite the Defendant No. 3 to come to their place and take care of the property. Since then the Defendant No. 3 along with Ors. s have been residing there as tenant at will.

4. On consideration of the pleadings reproduced above the learned Trial Judge framed as many as six issues. It appears from the impugned judgment that all the issues have been decided in favour of the Plaintiff/Appellants. Only in the operative part of the judgment, while declaring the title of the Plaintiff/Appellant, the learned Judge abruptly came to the conclusion that a decree for eviction could not be passed for non-service of prior notice on the Defendants.

5. I have carefully gone through the evidence on record. It appears that the Defendant No. 3 examined himself and two Ors. witnesses in support of his claim. In his evidence he deposed that his sister, after the death of her husband wanted him to stay with her to help her in business. She had given him 13 kathas 4 lechas of land where he had constructed residential houses. Since then he has been living there with his family. Nowhere in his evidence he stated anything about the oral gift of the land made in his favour. DW 2 and DW 3 also spoke nothing about the alleged gift. The learned Trial Judge, therefore, was right in rejecting the plea of gift. Moreover, both the parties are Hindus by religion and under the law, oral gift amongst them is also not legally permissible.

6. The finding of the learned Trial Judge to this effect has been challenged by the Defendants by preferring any cross-appeal. Failure to substantiate the plea of gift could naturally justify the conclusion that the Appellants have subsisting right, title and interest over the suit land.

7. On the face of this, the claim of the Defendant that they have constructed residential premises over the disputed land has to be examined. The learned Trial Judge after evaluating the evidence on record came to the conclusion that the claim of the Defendants could not be established by cogent and reliable evidence. The learned Trial Judge dealt with the matter in Issue No. 4. After evaluation of the evidence of all the five DWs, the learned Judge rejected the defence claim on the ground that no evidence has been adduced to show as to how and when the Defendant No. 3 constructed the houses. No documentary evidence is also available in this case to show that it was Defendant No. 3 who out of his own money constructed the said houses. Even the carpenter or any of the labourers who were engaged in construction has not been examined in this case. The Learned Trial Judge did not rely upon the oral statement of the Defendant No. 3 and Ors. witnesses which in his opinion was not adequate enough for a conclusion in favour of the Defendants. This decision of the Learned Trial Judge has also not been assailed by filing any cross appeal. After careful consideration of the evidence on record, I find no reason to disagree with the Learned Trial Judge so far the claim of construction of the suit houses by the

Defendant No. 3 is concerned. The finding of the learned Trial Judge in this issue warrants no interference.

8. Long possession by a caretaker or a licensee cannot in itself vest in him a right to continue with the possession. When the title of the Plaintiff is admitted and eviction is resisted on the basis of an alleged oral gift, it would not be fair to conclude by way of presumption that the Defendants are licensees and having raised permanent construction on the suit land within the knowledge of the licensor are entitled to protection from eviction. The provisions of the Indian Easement Act, 1882 cited and relied upon by the learned Counsel for the Respondents are not applicable in the State of Assam. Even if we go by the spirit of the aforesaid Act, there is no room for conclusion that a notice to a licensee prior to the institution of a suit for his eviction is necessary. Section 63 of the Act provides for a reasonable time to a licensee to enable him to remove any goods which he has been allowed to place on such property. It obviously does not contemplate a prior notice. In the instant case, the learned Trial Judge has decided that the house was in all probability constructed by the mOrs. of the Plaintiff and there is no acceptable evidence on record that it was constructed by the Defendant No. 3. In view of this, the question of a notice before institution of the suit cannot be held necessary even to comply with the spirit of the provisions of the Act. The Court while passing the decree and declaring the title of the Plaintiff over the suit land could have easily given sometime to the Defendants to vacate the suit premises instead of dismissing the suit.

9. It is not a case between the landlord and the tenant. Hence, the question of notice prior to the institution of suit does not arise. Since I find no reason to disagree with the finding of the Trial Judge in so far the title is concerned, I think it is a fit case where the appeal should be allowed and the relief as prayed for in the suit be granted.

10. In the result, the appeal is allowed. The judgment of the learned Trial Judge in so far it relates to the rejection of the Plaintiff's/Appellant's prayer for eviction of the Defendant is concerned, is hereby reversed. The suit is decreed in full with the declaration of the title of the Plaintiffs over the suit premises and also for eviction of the Defendants therefrom. The Defendants, considering their long possession, are allowed six months time to vacate the suit premises failing which the decree may be put into execution.

11. Considering the circumstances, the parties are directed to bear their respective costs.