

(1998) 11 GAU CK 0009
In the Gauhati High Court
Case No : Second Appeal No. 19 of 1997

Mantunag

APPELLANT

Vs

Empire Plantation (I) Ltd.

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 15 Rule 1, Order 15 Rule 2, Order 15 Rule 3, Order 20 Rule 5
Specific Relief Act, 1963 — Section 34

Citation : (1998) 4 GLT 375

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : A.S. Choudhury, for the Appellant; S. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Singh, J.—Heard Mr. A.S. Choudhury, learned Counsel for the Appellant and Mr. S. Sarma, learned Counsel for the Respondent.

2. The judgment and decree dated 12th day of November, 1990 passed by the learned Assistant District Judge, Sonitpur allowing the appeal of the present Respondent thus reversing the judgment and decree of the learned trial Court, namely Sadar Munsiff, Tezpur in original T. Suit No. 35/80 is the subject matter under challenge in this Second Appeal. As required by the provisions of law laid down under Order 41, Rule 31 CPC this Court highlight the facts of the case in a very short compass and also the points for determination, the decision thereon; and the reasons for decision as hereunder:

3. A suit was initially instituted by the Plaintiff the Respondent herein before the learned trial Court for possession of the suit land and eviction of the Defendant Appellant herein by contending, inter alia, that the Plaintiff Respondent is a Company incorporated under the Indian Companies Act and carrying on business of production and manufacture of Tea and he is the owner of Borjuli Tea Estate and the owner of the suit land and that the Appellant Respondent herein had

forcibly trespassed into the suit land on 26th June, 1980 without any authority thus disturbing the peaceful possession of the Plaintiff. In view of the above position, the Plaintiff Respondent filed the present original suit before the trial Court. That suit was contested by the Defendant Appellant herein by denying all the statement and allegations made by Plaintiff Respondent, thus contending, inter alia, that he had derived rather accrued his right and title over the suit land by adverse possession since he possessed the suit land for a long time with the knowledge of the Plaintiff Respondent and the Plaintiff Respondent has no right, title and interest over the suit land.

4. The learned trial Court framed as many as 12 issues at the first hearing of the suit as required under the CPC for just determination of the real points in controversy between the parties. For better appreciation in the instant case, these issues are reproduced as hereunder:

1. Whether there is any cause of action in the suit?
2. Whether the suit is maintainable in its present form?
3. Whether the suit is barred by limitation?
4. Whether the suit land has been acquired by the Government under Ceiling Act and whether the Plaintiff has right to sue?
5. Whether the State of Assam is a necessary party in the suit?
6. Whether the suit has been properly valued and whether proper Court fee has been paid?
7. Whether the suit is barred u/s 34 of the Specific Relief Act?
8. Whether the Defendants possession has been adversed against the Plaintiff?
9. Whether the Defendant trespassed into the suit land on 20.6.88 as alleged by the Plaintiff?
10. Whether the Plaintiff is entitled to get decree as prayed?
11. Whether the Plaintiff suit is false, baseless and vexatious as alleged by the Defendant and whether the Defendant is entitled Rs. 3000.00 as compensation u/s 35(A) Code of Civil Procedure?
12. To what other relief parties entitled?

Perused the entire evidence on records and the exhibited documents and also plaint and W/S and above mentioned issued shall be discussed in the light of the plaint, W/S exhibited documents and entire evidence on the records?

5. The Plaintiff Respondent examined 3 witnesses and the Defendant examined 2 witnesses in support of their cases. The Plaintiff also produced a Jamabandi marked as Ext. (1) for establishing his case that the suit land belongs to the Plaintiff and whereas the Defendant did not produce any documentary evidence

in course of the trial before the learned trial Court. Upon hearing the parties and also considering the available materials on record the learned trial Court dismissed the suit of the Plaintiff by holding that the Plaintiff has got no cause of action for the suit and the learned trial Court decided the Issue No. 1 namely, "Whether there is any cause of action in the suit"?. In the light of the observation and decision made on Issue No. 1, the learned trial Court opined that it is not necessary to discuss other aspect of the evidence and hence the suit was dismissed with cost. Being dissatisfied with the judgment and decree of the learned trial Court the Plaintiff preferred an appeal from the original decree before the first appellate Court, namely, the Assistant District Judge, Sonitpur. The first appellate Court upon hearing the parties allowed the appeal of the Plaintiff thus remanding the suit to the learned trial Court to decide the suit in the light of the observation made in the appellate judgment and decree and to dispose of the same by deciding all issues in disputes on its own merit under the related implied judgment of 12th November, 1990. Being aggrieved by the impugned judgment and decree passed by the first appellate Court, the present Defendant Appellant preferred this Second Appeal.

6. At the time of admission of this Second Appeal this Court formulated 5 substantial questions of law as required u/s 100 Code of Civil Procedure. Those substantial questions of law so far formulated by this Court are reproduced as hereunder:

2. For that substantial questions of law arises as to whether the learned lower appellate Court is right and has not exceed jurisdiction in setting aside the decree and in remanding the case without considering that the suit as it was instituted by the Plaintiff Respondent is not maintainable in view of Order 30 Rules 1 and 2 of the Code of Civil Procedure.

3. For that substantial questions of law arises as to whether the learned lower Court is right and has not acted beyond his jurisdiction inasmuch as u/s 99 of the CPC no decree shall be reversed or modified for reasons not affecting merits of the case or jurisdiction of the trial Court below.

4. For that substantial questions of law arises as to whether the learned lower appellate Court is right and has not failed to exercise jurisdiction in not directing the learned trial Court as to what issue or issues shall be tried in the case so remanded in view of Order 41, Rule 23, 23A of the Code of Civil Procedure.

5. For that substantial questions of law arises as to whether the learned lower appellate Court is right and has not failed to exercise jurisdiction in not directing that the evidence recorded during the original trial shall be the evidence during the trial after the remand in view of Order 41, Rule 23 of the Code of Civil Procedure.

6. For that substantial questions of law arises as to whether the learned lower appellate Court is right and has not failed to exercise jurisdiction in not framing the issues and refer the same for trial to the Court below in view of Order 41,

Rule 25 of the Code of Civil Procedure.

7. Learned Counsel appearing for the Appellant at the very outset contended that the learned trial Court rightly dismissed the suit of the Plaintiff and there is no irregularity or illegality in the judgment and decree of the learned trial Court, inasmuch as the learned trial Court while disposing the suit gave reasoned judgment, as the Court found that the decision or reason on a particular issue is sufficient for decision of the suit. In the instant case also the learned trial Court took up the issue No. 1 first and decided the said issue No. 1 on the basis of the available evidence on record and rendered a reasoned judgment thus dismissing the suit of the Plaintiff and as such no interference is called for by the first appellate Court. Mr. A.S. Choudhury, learned Counsel for the Appellant contended. It is also submitted that Order 20 Rule 5 CPC laid down this established principles of law and as such the learned trial Court decided the case particularly the Issue No. 1 as the learned trial Court found that no decision on the other related issues is required as the decision on issue No. 1 is suffice for just determination of the real points in controversy between the parties. It is also argued by the learned Counsel for the Appellant that the first appellate Court ought to have dismissed the appeal of the Plaintiff and apart from it, first appellate Court exceeded its jurisdiction in setting aside the judgment and decree of the trial Court and in remanding the case to the trial Court without considering the evidence on record. It is also submitted by the learned Counsel Mr. Choudhury that the present suit of the Plaintiff is hit by the provisions of law laid down under Order 30 Rules 1 and 2 inasmuch as the Plaintiff is not duly represented by its authorised agents or partners. At this juncture, the submission of Mr. Choudhury learned Counsel for the Appellant has impressed me as he has rightly pointed out this point of law as the Plaintiff being a Company under the Indian Companies Act is not duly represented by its authorised agent which is required under the provisions of law as discussed above. The learned Counsel for the Appellant also argued that no decree is to be reversed or modified for error or irregularity not effecting merits or jurisdiction as required u/s 99 of the Code of Civil Procedure. It is the established principle of law that nobody can go beyond this established law of the land laid down u/s 99 Code of Civil Procedure; but the Court is to examine as to whether the decree of the first appellate Court affects merits or jurisdiction. It is also submitted by the learned Counsel for the Appellant Mr. Choudhury that the first appellate Court had lost the sight of the provisions of law laid down under Order 15 Rule 3 CPC while passing the impugned judgment and decree inasmuch as the first appellate Court has failed to exercise its jurisdiction in not directing that the evidence recorded during original trial shall be the evidence during the trial after remand of the case, in view of the provisions of law laid down under Order 41 Rule 23 Code of Civil Procedure. This Court cannot agree with this submission of Mr. Choudhury with the following reasons:

8. These reasons are being rendered upon hearing Mr. S. Sarma, learned Counsel spearing for the Respondent.

9. The trial Court framed as many as 12 issues for just determination of the real points in controversy between the parties considering all the aspects that whether the parties are at issue or the parties not at issue as required under Order 15 Rules 1, 2 and 3 of the Code of Civil Procedure, but in the instant case, the learned trial Court decided only one issue i.e. the issue No. 1 as discussed above and the learned trial Court simply pointed that in the light of the decision made on issue No. 1 it is not necessary to discuss other aspect of the evidence and hence the suit was dismissed with cost. Law is well settled, it is on black and white. Order 14 Rule 2 CPC provides that the Court shall pronounce judgment on all issues but; a case can be disposed of on a preliminary issue and the Court can pronounce its judgment on that issue subject to the following conditions:

Where issues both of law and of facts arise in the same suit; and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force.

10. On bare perusal of the relevant case records it has been revealed that the learned trial Court did not take up a preliminary issue may be Issue Nos. 1, 2, 3 or so as required by law, but the learned trial Court decided the case on issue No. 1 only thus giving no reason or decision on other relevant 11 issues which is not warranted by law as required under Order 20 Rule 5 CPC which provides that the Court is to state its decision on each issue even though there is a rider in that provision of law which is not applicable in the instant case at all. This Court is of the view that the learned trial Court did not make any speaking order or decision with the reasons therefore on the related issues i.e. upon each separate issue and rather, the learned trial Court mis-appreciated rather misconceived the prescribed procedure of law as discussed above while passing the judgment and decree which was right reversed by the first appellate Court by giving a speaking order and reasoned judgment. However, the first appellate Court ought to have given an observation for framing an issue as required under Order 30 Code of Civil Procedure. Considering this aspects, this Court hereby formulates an issue, namely, "Whether the suit of the plaintiff is hit by Order 30 Rules 1 and 2 of the Code of Civil Procedure" and as such the learned Court shall frame this issue as Issue No. 12A.

11. For the reasons, observations and direction made above, this Second Appeal is devoid of merit and accordingly, it is dismissed without cost. The Registry is directed to transmit the related case records forthwith so as to enable the learned trial Court to dispose of the original suit expeditiously as the suit has been pending since a pretty long time. It is also made clear that an endeavour be made by the trial Court to dispose of the case as early as possible, so that parties may not suffer and justice is being done to them.