
(2016) 03 GAU CK 0007
In the Gauhati High Court
Case No : RSA 22 and 25 of 2006

Md. Amir Uddin Laskar and Others

APPELLANT

Vs

Md. Abul Hussain Laskar

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 3, Order 8 Rule 5
Criminal Procedure Code, 1973 (CrPC) — Section 144, Section 145
Evidence Act, 1872 — Section 68
Registration Act, 1908 — Section 23, Section 24, Section 25, Sect

Citation : (2016) 161 AIC 760 : (2017) 1 GauLR 805

Hon'ble Judges : Nishitendu Chaudhury, J.

Bench : Single Bench

Advocate : Das, for the Appellant; N. Dhar, for the Respondent

Final Decision : Dismissed

Judgement

Nishitendu Chaudhury, J.—1. Two second appeals based on common facts are listed together and are analogously heard. Except for two separate plots under same dag and patta of same mouza, all other facts are same. Even one set of residence was let by the plaintiff for his two identical suits while defendant has no evidence at all to rely in either case. Decision in one second appeal, therefore, would cover the other second appeal. RSA No. 22/2006 is argued by the learned counsel for both sides as lead case. It is accordingly decided.

2. In this second appeal, the defendant has challenged the judgment of reversal passed by the learned First Appellate Court in Title Appeal No. 32/2004. The learned Trial Court dismissed the suit against which the plaintiff preferred title appeal and the same was allowed by the impugned judgment and decree. Aggrieved, the defendant has preferred this appeal. Admitting the second appeal on 07.04.2006, this Court framed the following substantial question of law:--

"Whether the learned Appellate Court erred in law in reversing the Issue No. 4 and thereby holding that the plaintiff/respondent acquired right, title and interest

and possession over the suit land?"

3. Before proceeding to adjudicate the substantial question of law referred to above, it is necessary to state the brief facts involved in this appeal. Md. Abdul Hussain Laskar, respondent herein, preferred Title Suit No. 6/2001 in the Court of learned Civil Judge No. 1 (Junior Division), Silchar, against one Amir Uddin Laskar as defendant and 27 others as proforma defendants. It is stated in the body of the plaint that one Mahabir Rabidas was the original owner and possessor of the suit land described under schedule-1 to the plaint. He died in the year 1945 leaving behind 4 sons, namely, Somaera Rabidas, Monichera Rabidas, Mohadev Rabidas and Sonaram Rabidas. These 4 sons approached proforma defendant No. 28, Silchar Primary Co-operative Land Mortgage Bank Ltd. (later on designated as "ASCARD Bank"), Silchar, for loan of Rs. 10,000/- and executed a registered deed of mortgage on 23.07.1973 in respect of the suit land. As the mortgagee subsequently failed to repay the loan, the Bank put the land on auction sale under the provision of Assam Co-operative Land Mortgage Bank Act, 1960 (In short, "1960 Act") and held public auction on 12.10.1988. The land was sold in favour of the plaintiff. The sale was subsequently confirmed on 08.12.1989 by the Deputy Registrar of the Cooperative Society vide No. DFC/O-7/63/539. Plaintiff obtained possession over the land from SDC, Sonai Circle, vide Memo dated 13.02.1989. Plaintiff claimed to be in continuous possession of this land peacefully and without any intervention from any quarter beyond the period of limitation. But, in the month of November, 2000, the defendant No. 1 filed a case under Section 144 Cr.PC, in the Court of the learned Additional District Magistrate, Cachar, Silchar, and proceeding was drawn vide Case No. 382M/2000. The plaintiff appeared and submitted objection by producing the sale certificate and disclosed as to why he has approached the same. But, even thereafter, the learned Executive Magistrate drew up the proceeding under Section 145 Cr.PC., on 01.11.2000 and attached the land described at Schedule 2 to the plaint. Since it was disclosed in the aforesaid proceeding by the defendant No. 1 that he had purchased the land from the legal heirs of Mahabir Rabidas vide sale deed dated 15.06.1999. The plaintiff instituted the suit for declaration of his right, title and interest in respect of the Schedule 2 to the plaint and for confirmation of possession. The plaintiff also prayed for a declaration that the defendant No. 1 did not have right, title and interest and possession over the suit land and the registered sale deed No. 1761 dated 15.06.1999 described at Schedule 3 to the plaint is void, illegal and inoperative and liable to be set aside and cancelled. A prayer for temporary as well as permanent injunction restraining the defendant No. 1 from encroaching and or creating any disturbance to the schedule 2 land was also prayed for in the plaint.

4. On being summoned, the defendant No. 1 appeared and submitted written statement denying the case of the plaintiff in its entirety. In para 16 of the written statement, the defendant No. 1 has stated his own facts. According to him, he is a bona fide purchaser of the land described in schedule 2 to the plaint.

Defendant claimed to be in possession of the land and further pleaded that plaintiff was never in possession of the land. A good portion of land is low lying land and used as a fishery. The defendant claimed to be the owner of the area of 9 Bigha 10 Katha of land within specific boundaries and the same is the subject-matter of proceeding under Section 382M/2000 in the Court of learned Executing Magistrate, Silchar. It was disclosed that a separate suit being Title Suit No. 7/2001 has already been instituted by the plaintiff with regard to the remaining 2 Bighas 12 Kathas involved in the said Dag and Patta. According to the defendant, he purchased the suit land from the original owner vide registered sale deed No. 1761 dated 25.10.1987 for a consideration amount of Rs. 20,000/- and obtained the possession of the land from the original owners. It was claimed that the name of the vendors were mutated in the revenue records. He denied that Sub-Deputy Collector, Sonai, handed over possession of the land to the plaintiff. With such pleadings, the defendant prayed that the suit be dismissed.

5. On the face of the aforesaid rival contentions of the parties, learned Civil Judge (Junior Division) framed 6 issues. Subsequently an additional issue was also framed. These issues are quoted below:--

- "1. Is there is any cause of auction for the suit?
2. Is the suit maintainable in its present form and under law?
3. Is the suit barred by law of limitation?
4. Whether the plaintiff has right, title, interest and possession over schedule-2 land which is within the schedule-1 of the plaint?
5. Whether sale deed No. 1761 registered on 15.06.1999 under Sub-Registry Office, Silchar is void, illegal and inoperative =?
6. Whether the plaintiff is entitled to a decree for any other relief, as prayed for?

Additional Issue:--

1. Whether the proforma defendant Nos. 2 to 27 have got any legal right to sell the property without redeeming the mortgage?"

6. This suit was tried together with Title Suit No. 7/2001 as the subject matter of both the suites are analogous and based on same set of facts. It appears that the parties led one set of evidence for both the analogous suits as they were tried together. The plaintiff examined 2 witnesses as PW1 and PW2 and exhibited five documents as Exhibit 1 to 5. The defendant examined himself as DW1 by filing affidavit, but subsequently, did not come to the witness box for cross-examination for which his affidavit evidence was expunged by the Trial Court vide order dated 21.05.2004. Upon consideration of the evidence available on record, the learned Trial Court decided all the issues in favour of the plaintiff. Coming to Issue No. 4, the learned Trial Court held that Exhibit 3, Mortgage Deed, was not duly proved by the plaintiff by examining any attesting witness as required under Section 68 of the Evidence Act. Since Exhibit 2 is based on Ext. 3 and Ext. 3 was

not duly proved, so according to learned Trial Court, the plaintiff could not prove his title. Moreover, the plaintiff himself did not come in the witness box to prove his own case. Coming to the question of possession, the learned Trial Court held that possession was handed over to the plaintiff by Settlement Officer, Sonai Circle, in the year 1989, whereas, it was pleaded that the Sub-Deputy Collector, Sonai Circle had delivered the same. Relying on Ext. 5 (report of the Settlement Officer), the learned Trial Court noted that one Noni Gopal Das, Patowary of Sonai Circle handed over possession of the land to the plaintiff on the strength of a Sale Certificate. But, under Section 16 of the 1960 Act, possession has to be handed over by the Court and PW1 had specifically admitted in Court in his cross-examination that he did not get possession through the Civil Court. With these findings, the learned Trial Court was of the view that plaintiff did not get possession by due process of law as Patowary has no legal authority to deliver possession of such land to the plaintiff. Accordingly, Issue No. 4 was decided in the negative and against the plaintiff. Consequently, Issue No. 5 involving the validity of the sale deed registered on 15.06.1999 was decided in favour of the defendant. This is because the plaintiff had sought for declaration that this deed did not confer any title to the defendant the same being subsequent to auction purchase by him. The learned Trial Court first held that the plaintiff did not acquire any title by Ext. 2 and Ext. 3 and so the defendant acquired title in view of execution of Sale Deed dated 16.06.1999 by the original owner. Accordingly, both the principal issues, namely, Issue No. 4 and Issue No. 5 were decided in favour of the defendant. Consequently, suit of the plaintiff was dismissed in entirety with cost by judgment and order dated 21.06.2004.

7. Aggrieved, the plaintiff preferred Title Appeal No. 32/2004 in the court of learned Civil Judge (Senior Division) No. 1, Cachar, Silchar, challenging the aforesaid judgment and decree passed by the learned Trial Court. The learned First Appellate Court having considered the materials available on record and after hearing the learned counsel for the parties, reversed the findings of the learned Trial Court in so far as Issue No. 4 and Issue No. 5 were concerned. Based on reversal of findings in regard to Issue No. 4 and 5, the learned First Appellate Court decreed the suit in entirety. According to the learned First Appellate Court, Ext. 2 and Ext. 3 were issued to the plaintiff by the Bank. Ext. 2 is a sale certificate issued by the official of the Cooperative Department, which was proved in original. Ext. 3 is a signed copy of mortgage deed and the same having been issued by the Bank, it was admissible in evidence under Section 30 of the 1960 Act. Relying on the two deeds, the learned First Appellate Court was of the view that there was an auction sale of the suit land in favour of the plaintiff and the sale was duly confirmed by the appropriate authority. Coming to the question of possession over the suit land, the learned First Appellate Court held that possession as claimed by the plaintiff over the land is no way contradicted by the defendant by adducing evidence or asserting claim over it and so there is force in the submission made by the learned counsel for the appellant that plaintiff has acquired right, title and interest including the

possession over the schedule 2 land. Having found that title was already acquired by the plaintiff by way of sale certificate dated 12.02.1989, the learned Trial Court decided Issue No. 5 in favour of the plaintiff and held that subsequently executed sale deed dated 15.06.1999 is void having been executed after the auction sale of the property. This is because if the auction sale was made, the original owners were no longer owner in possession of the suit land and so they could not have transferred any title whatsoever. This appellate judgment and decree dated 30.09.2005 has been called in question in the present second appeal leading to formulation of the sole substantial question of law as quoted at the beginning.

8. I have heard Mr. Das learned counsel for the appellant and Mr. N. Dhar learned counsel for the sole respondent. I have perused the lower Courts record including depositions of the two witnesses adduced by the plaintiff.

9. Mr. Das submits that Ext. 2 does not attract the suit land as no boundaries have been mentioned therein. So, on the basis of such sale certificate, plaintiff cannot acquire title and so the learned First Appellate Court committed error in deciding Issue No. 4. He further submits that Ext. 3 has not been proved in accordance with law. It is neither a registered document nor had the plaintiff examined any attesting witness to prove the same and so the plaintiff having failed to prove the Ext. 3, the learned First Appellate Court committed error in declaring title and possession of the plaintiff over the suit land. According to him, statute has laid down a procedure under Section 16 for obtaining possession by a purchaser in an auction sale under the 1960 Act, and so the possession claimed to have been obtained by the plaintiff without complying with such procedure was not a valid one. He also raised the issue that the plaintiff having impleaded the Manager of the Silchar Primary Cooperative Bank Limited, the suit is bad for necessary parties and even on that count, the learned First Appellate Court ought to have dismissed the appeal.

10. Per contra, Mr. N. Dhar, learned counsel, appearing for the sole respondent, submits that Ext. 2 has been proved in original, which is a sale certificate, issued by the Civil-Officer-cum-Sub Registrar of Cooperative Society. This being a public document proved in original, sale has duly been proved. Referring to the provision of order VII Rule 3 of the CPC, Mr. Dhar would argue that the land has been suitably described in the sale certificate by making mention of 32 Bighas 4 Kathas 13 Chithas and the same has been described to be the area of the full Dag of the land. Once, it is mentioned in the sale certificate that the full Dag has been sold and Dag No. and Patta No. has been specifically mentioned, it is substantial compliance of Order VII Rule 3 of the CPC. Coming to the admissibility of Ext. 3, Mr. Dhar would argue that mortgage has nowhere been denied by the defendant in the present case. The defendant specifically admitted in para 10 of the written statement that he does not have any knowledge in regard to the mortgage in question. In the absence of a specific denial within the meaning of order 8 Rule 5 of the CPC, the plaintiff was not under any obligation

to comply with the provision of Section 68 of the Indian Evidence Act, 1872. The Learned First Appellate Court, therefore, did not commit any illegality in passing the impugned judgment and rather the learned Trial Court committed error in dismissing the suit. Mr. Dhar further argues that whether or not possession was given by following the procedure under Section 16 of the Act, facts remains that the plaintiff is in possession of the suit land and so the procedure as to how the possession has been handed over to the plaintiff cannot come for adjudication in the present case. Rightly or wrongly the plaintiff is in possession of the land since auction purchase in 1989 and he has been possessing the same for period of over limitation. Relying on a judgment of the Hon''ble Supreme Court in the case of Pratapray N. Kothari v. John Braganza, reported in , (1999) 4 SCC 403, Mr. Dhar would argue that any person in long and continuous possession of an immovable property can definitely claim for a decree of injunction against any person in the World except the original owner and so the suit filed by the plaintiff for permanent and temporary injunction restraining the defendant from dispossessing him from the suit land is very much maintainable. With these arguments, Mr. Dhar would pray that the sole substantial question of law be decided in favour of the respondent and consequently, this second appeal be dismissed.

11. I have given my anxious consideration to the respective submissions made by the learned counsel for both the parties. The parties have a common case in so far as the original owner of the land is concerned. Both the parties admit that Mahabir Ravidas was the original owner in possession of 32 Bigha 4 Kathas 13 Chithas of land covered by Dag No. 34 of second RS Patta No. 199 of Sonapur Mouza Baghpur Part-II in the District of Cachar and on his death, the same devolved on his 4 (four) sons, who or their heirs are the proforma defendants in the main suit. The principal defendant No. 1 also admits that proforma defendants, who are descendants of Mahabir Ravidas, are the original owners of the suit land and so there is no dispute as to the original ownership of the land. The parties have diverged only on the question of transfer of title from the original owners. Where it is the case of the plaintiff that original owners mortgaged the suit land in favour of Silchar Primary Cooperative Land Mortgage Bank, which, in turn, sold the land in auction by provision of the 1960 Act, the defendant does not admit this position. The defendant has a clear case that original owners being in possession of the suit land executed registered sale deed dated 15.06.1999 in his favour and handed over the possession and consequently they have been so possessing. When the plaintiff wanted to dispossess them in the year 2000, he approached the learned Executive Magistrate by instituting a proceeding under Section 144 Cr.PC., leading to registration of Case No. 382M/2000 and the same was subsequently converted into a proceeding under Section 145 Cr.PC. The learned Executive Magistrate, thereafter, attached the land. At this stage, plaintiff rushed to the Civil Court and instituted two different suits, being Title Suit No. 6/2001 and Title Suit No. 7/2001 making identical pleadings in both the cases and taking claim of right,

title and interest on the basis of auction sale by the Land Mortgage Bank. So far as a sale certificate is concerned, it has been proved as Ext. 2 in original and that document having been issued in respect to the entire land covered by Dag No. 34 of second RS Patta No. 199, the whole dag has been sold in favour of the auction purchaser. The plaintiff, by examining himself, claimed that he has been in possession of the land all along since 1989. The fact as to possession of the land is a matter of documentary evidence by Ext. 5. Besides Ext. 5, the plaintiff adduced oral evidence of being in possession. The correctness as to the claim of the plaintiff being in possession of the land has not been questioned by the defendant in course of cross-examination. The defendant did not lead evidence to prove that he is in possession or that as on 15.06.1999, the original owners were in possession. At this stage, Mr. Das has further pointed out that the sale deed was really executed on 25.10.1987 i.e., prior to auction sale, but it was subsequently registered on 15.06.1999. Such a revelation made by the learned counsel for the appellant creates yet another hurdle for the defendant adding another shot in the arms of the plaintiff in its endeavour to get a declaration of a decree. This is because under Section 23 of the Registration Act, 1908, time for presenting a document for registration has been prescribed. It is provided therein that subject to provision contained in Sections 24, 25 and 26 of the Registration Act, 1908, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within 4 months from the date of its execution. No evidence has been led by the defendant to show that the document was presented in time and it was registered later on for some or other reasons. In the absence of any evidence to that effect, the sale deed registered on 15.06.1999 comes under the mischief of Section 47 of the Registration Act, 1908 and consequently by operation of Section 49 of the Registration Act, 1908, the sale deed registered on 15.06.1999 normally cannot confer any title to the purchaser. Be that as it may, such a revelation having been made at the second appellate stage, on the absence of any pleadings or evidence to that effect, the same is kept out of consideration for the time being.

12. Admittedly, there are documents like Ext. 2 and Ext. 5 on record to show that the public authorities had issued sale certificate in favour of the plaintiff with regard to the suit land and also handed over possession. The defendant, having claimed in written statement of being in the possession of the suit land, did not come to the witness box to establish his assertion. No witness from the locality was brought to show as to whether the defendant was in possession of the land at any point of time as claimed. On the contrary, PW1, being the father of the plaintiff, has asserted that the plaintiff is in possession of the suit land and he proved the documentary evidence as Ext. 5 to show that the land was handed over to the plaintiff in the year 1989 and in that event the claim of the plaintiff of being in possession of the suit land is probable. The learned First Appellate Court has considered Ext. 2 and Ext. 5 in their entirety and so such a finding of the learned First Appellate Court in regard to possession of the plaintiff cannot be

erroneous or perverse. The only question remains as to whether Ext. 3 was duly proved or not. Ext. 3, which is available on record, is an unregistered document in the form of a bank's paper. This document described to be CLM form No. 13 of the Bank, has been filled up by the appellant and it is not a mortgage deed within the meaning of Section 59 of the Transfer of Property Act. If this document is created by the bank by itself under CLM Form No. 13, in that event, the learned First Appellate Court did not commit any error in holding that the document having been possessed by the bank and certified under the seal and signature of Inspector of the Cooperative Society, was a valid document and is admissible in terms of Section 30 of the 1960 Act. Had it been a case of the plaintiff that mortgage deed was executed in compliance of Section 59 of the Transfer of Property Act by executing and registering document and attested by two witnesses, in that event, compliance of Section 68 of the Evidence Act would have been necessary. The plaintiff presented the original document and it shows that it is a bank document under CLM form No. 13 and so the finding of the learned First Appellate Court in this regard, is correct.

13. In view of what has been stated above, it is clear that the land in question was originally owned by Mahabir Ravidas, who died in the year 1945 leaving behind 4 sons. Descendents of Mahabir Ravidas acquired right, title and interest over the suit land and they subsequently mortgaged the same in favour of the bank on 23.10.1973 and obtained loan of Rs. 10,000/- and they having failed to repay the debt, bank took recourse to auction sale and thereby the sale certificate in question, vide Ext. 2 dated 13.02.1989, was issued, which was confirmed by the Deputy Registrar of the Cooperative Society. Under Section 18 of the Act, it is not open to question the title of an auction purchaser on the ground that sale has not been made by following the due procedure prescribed under the Act.

14. In that view of the matter, the sale certificate, Ext. 2, cannot be questioned. The defendant did not lead any evidence to show that there was no such mortgage or there was no such sale and the plaintiff having claimed to be the purchaser and having possession over the suit land and not having come to the witness box to establish his case, presumption under Section 14 is liable to be taken against him and the same has been done by the learned First Appellate Court. Considering the entirety of the circumstances, the findings arrived at by the learned First Appellate Court are neither perverse nor erroneous and accordingly the sole substantial question of law is decided in negative and against the appellant. Consequently, the second appeal stands dismissed. Interim order, if any, stands automatically vacated.

15. Send down the records.