
(2002) 02 GAU CK 0043
In the Gauhati High Court
Case No : Second Appeal No. 3 of 1988

Paokhothang Haokip and Others

APPELLANT

Vs

Dozakhup Paite

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 67
Specific Relief Act, 1963 — Section 16

Citation : AIR 2003 Guw 44 : (2004) 1 GLR 79 : (2003) 1 GLT 303

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : A. Nilamani Singh and A. Bimol Singh, for the Appellant;

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard Mr. A. Nilamani Singh, learned Sr. Counsel being assisted by Mr. A. Bimol Singh, learned counsel for the appellants.

2. None appears for the plaintiff/respondent despite notices.

3. Having been informed of the death of the counsel for the respondent, this Court by order dated 29-8-2001 directed the office to issue notice on the respondent intimating him about the pendency of this appeal and the said notice was made returnable within one month. As per Office note dated 1-9-2001, it appears that notice was issued to the respondents returnable on or before 2-10-2001. Thereafter. Office note dated 9-10-2001 goes to show that the notice to the respondent returned after causing proper service. Since nobody has put in appearance on behalf of the respondent, though notice has been duly served upon them, as per above office notes and on considering the long pendency of this matter from 1988, this Second Appeal being listed for hearing, is taken up today for final disposal in the absence of the respondent.

4. On perusal of the records including various orders, it transpires that no

substantial question of law has been formulated in this second Appeal.

5. Upon hearing the learned Sr. Counsel for the appellants, the following substantial question of law is formulated :

"Whether the Appellate Court below while reversing the judgment and order of the trial Court committed perversity based on surmises and conjectures by misreading the material evidence on record."

6. The plaintiff/respondent has filed a suit before the learned Munsiff, Churachandpur for granting perpetual injunction, contending that he purchased the suit land from the appellants/defendant No. 1 on 26-6-64 by executing a registered sale deed. Possession of the said Suit land was taken over by the plaintiff from the date of purchase and till date he has been in possession. It was alleged that the defendant/ appellant trespassed into the Suit land on 21-1-86 and damaged tress, cultivation etc. growing on the said Suit land. However, the defendant/appellant were repulsed by the plaintiff/respondent. But still the defendants were threatening to commit their illegal acts of cutting forest or cultivation within the suit land. It was prayed that if the defendants were not restrained by way of permanent injunction, there was apprehension that the plaintiff would be dispossessed from the suit by the defendants.

7. Contesting the suit, the defendant/ appellant filed written statement refuting the averments made in the plaint and claimed that the defendant No. 1/appellant never executed the sale deed in question nor had he handed over the suit land in favour of the plaintiff. It was stated that the defendant No. 1 is the Chief of Songpeh Village and the Suit land was a grazing ground of that Village.

8. The Trial Court framed as many as five issues, which are as follows :--

1) Whether the plaintiff purchased the suit land from the defendant No. 1 on 26-6-64 by means of a registered sale deed?

2) Whether the plaintiff and his villages have been in possession of the suit land since 26-6-64?

3) Whether the suit suffers from nonjoinder of parties inasmuch as the co-villagers of plaintiff are not made party in the case?

4) Whether there is cause of action in the suit?

5) Whether the plaintiff is entitled to the relief claimed?

9. The Trial Court answered all the issues except issue No. 3 against the plaintiff/respondent and in the result dismissed the suit of the plaintiff by judgment and decree dated 31-8-1987.

10. Feeling aggrieved, the plaintiff/respondent moved an appeal before the learned District Judge, Manipur through Civil Appeal No. 10 of 1987 contending that the learned Munsiff failed to appreciate the material evidences on record in its proper perspective and arrived at a wrong finding ignoring the vital evidence,

11. The Appellate Court upon hearing the learned counsel for the parties and after taking into consideration of the evidence on record, by its order dated 28-3-88, allowed the appeal setting aside the judgment and decree passed by the learned Munsiff.

12. Dissatisfied with the findings of the Appellate Court, this Second Appeal has been preferred by the defendant/appellant being Second Appeal No. 3/88. Since 1988, this case has been pending for the last more than a decade.

13. The main issue that revolves round this Appeal is that whether registered sale deed dated 26-6-64 in question was duly executed. Mr. A. Nilamani Singh, learned Sr. counsel appearing on behalf of the appellants, with a forceful argument, contended that the findings of the Appellate Court was absolutely perverse and based on surmises and conjectures inasmuch as there had been a total non-application of mind in appreciating the material evidence on record. According to the Appellate Court in reversing the judgment and order of the Munsif Court, took a total u-turn on the material evidences. Referring to the findings of the impugned judgment, it is submitted that when the PW-1, the plaintiff and other two witnesses i.e. PW-2 and PW-3 namely; Duwan Guile and Thongam Guite could not prove the execution of the sale deed, the learned District Judge ignoring the said evidences, accepted that the sale deed was duly executed. It is a clear case of the appellant that he did never sign the sale deed in question and at no point of time he delivered the suit land to respondent. In these circumstances, the sale deed cannot be accepted to be executed at all. He has further stated that it is also settled law that mere signing of a document does not mean execution. For the purpose of execution, the executant must accept the contents of the document and that apart, there must be clear evidence that he put his signature on the document having known about the contents thereon fully. The learned Munsiff after appreciation of the evidences of PW-1 and other two witnesses i.e. PW-2 and PW-3 rightly held that the execution of registered sale deed could not be proved and the plaintiff failed to bring home the fact that the defendant/appellant had ever executed the sale deed in his favour.

14. In order to appreciate the submission of the learned Sr. Counsel, I have gone through the impugned Judgment of the Appellate Court as well as the judgment and decree passed by the learned Munsiff including evidences of PWs-1, 2 and 3. On careful perusal of the same, it is found that the learned District Judge in appreciating the evidences of those witnesses along with the witnesses of the appellant/defendant, discussed elaborately the deposition of all those witnesses in its proper perspective. From the evidences, it is found that the PW-1, the plaintiff/respondent adduced that he purchased the land in question for a considerable amount of Rs. 1,500/- paid to the defendant with delivery possession by executing the registered sale deed and he got the delivery of possession. It is found in his deposition that the defendant/appellant put his signature on the sale deed (Ext. A/1) in presence of the plaintiff/respondent.

According to him, PWs.-2 and 3 were the witnesses at the time of executing the sale deed by putting their signatures and thumb impression in his presence. The plaintiff exhibited the signature of the defendant No. 1 on the sale deed as Ext. A/1(1) to A/1(10). He also exhibited the signatures marked as Ext. A/1/31 to A/1/41 as signatures of PW-2. On the other hand, it appears from the evidences/ deposition of the PW-2 and PW-3 that they corroborated the evidences of the plaintiff/respondent as regards the purchase of the said land through the registered sale deed in question in which they were the attesting witnesses, with consideration.

15. After going through the evidence, I am of the view that the learned District Judge has correctly and properly appreciated the evidences of the witnesses and accordingly, I do not find any perversity in appreciating the evidences. That apart, the findings of the Appellate Court does not reveal that those are based in surmises and conjectures. No glaring inconsistency and contradictions in evidence are ever noticed therein.

16. Mr. A. Nilamani Singh, learned Sr. counsel for the appellants on the point of perversity has relied on two recent decisions of the Apex Court namely; the cases of Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., and Shri Hafazat Hussain Vs. Abdul Majeed and Others, Following the ratio of those cases, there is no second opinion that High Court can interfere with the findings which suffers from perversity and based on surmises and conjectures. Moreover, misreading of material facts on record itself empowers the High Court to interfere with the findings of the Court below in second appeal. Seemingly, there is no such misreading of material facts on record in the instant case.

17. The Ruling of this court in Bhutkani Nath v. Mt. Kamaleswari Nath reported in AIR 1972 Gua 15 has been cited before me by Mr. A. Nilamani Singh, learned Sr. counsel to hammer home the point that mere signing of a document cannot give rise to a valid execution of a document (registered sale deed in question). He has referred to the relevant portion of the judgment in paragraph 6, which runs as :

"Execution of a document is not mere signing of it. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put his signature in a document after knowing fully its contents."

According to him, in the instant case the appellant at no point of time sold the land to the respondent by executing registered sale deed. It is submitted that in his deposition, the plaintiff had clearly said that he never put his signatures appearing at Ext. A/1(1) to A/1(10). It was also adduced by him that he knew PW-2 and PW-3 but did not know their signatures. As such, there was no execution in the eye of law.

18. The case of Bhutkani Nath (supra) cited by the learned Sr. counsel for the appellants, in my considered opinion, is not applicable in this case because the

case relates to sale deed which was signed by one Udit (DW-1), the writer of the document on behalf of one Lakhiram. In that case, their Lordships held that the said Udit was not fully authorised by the said Lakhiram, It was the Udit who attested even the thumb impression of Lakhiram even before the Sub-Registrar. The Court found on both the pages of sale deed the name of Lakhiram being put by Udit. In the instant case, such thing did not happen. It is a simple case of denial of execution of the registered sale deed in question by the defendant No. 1 who claimed that he did never put his signature on the said document when the plaintiff with the other witnesses claimed that the sale deed in question was signed by him in those pages. The fact which has been duly accepted by the Appellate Court after elaborately going through their evidences.

19. Most interesting aspect of the instant case is that from a careful scrutiny of those Judgments and decree of both the courts below, it appears that the appellants at no point of time did challenge the said execution of the registered sale deed seeking a declaration of the same to be void any invalid nor had filed any cross-case in the suit itself for cancellation of the sale deed. Even it is intriguing and disturbing why the appellants did not take any step in terms of Section 67 of the Evidence Act. He could have easily resorted to any mode of proving his signature as prescribed under the law of evidence. In the instant case, the defendant appellant failed to take necessary steps to disprove the execution of the document in question. On the other hand, the learned District Judge has categorically found that the execution had been proved by the respective witnesses by clear and unambiguous evidence.

20. Upon hearing the learned counsel for the appellants, I do not find enough force to approve the said submission advanced on behalf of the appellants, on meticulous perusal of the Impugned judgment, in my considered view, the same is not perverse and the findings also are not based on surmises and conjectures. Accordingly, I am in full agreement with the trenchant views expressed by the learned District Judge.

21. At this stage, Mr. A. Nilamani Singh has pleaded that the matter may be remanded back to the Trial Court for consideration of the entire matter afresh by allowing the defendant to prove the sale deed by handwriting expert in order to meet the ends of justice. I am not at all inclined to accept the said submission. The sale deed in question relates back to 26-6-64. I do not think any lawful purpose would be served if the matter is send back now after such an astounding long gap of almost four decades.

Consequently, this appeal fails. Interim order. If any, shall stand vacated. No costs.