

(2006) 09 GAU CK 0017
In the Gauhati High Court
Case No : S.A. No. 40 of 1998

Pradip Singha Roy and Others	Vs	APPELLANT
Debka Singha (Chakraborty) and Others		RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(4), 100(5)

Citation : (2006) GLT 367 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : D.R. Choudhury, for the Appellant; S.K. Laskar, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—For reasons not intelligible, the same Appellants have preferred above (2) appeals against same judgments of the trial court and the first appellate court recording concurrent findings and, therefore, it is proposed to dispose of them by this common judgment.

2. Asish Kumar Singha and Sudhansu Bikas Singha Roy were close neighbours. Asish instituted Title Suit No. 80/1988 in the court of Civil Judge (Jr. Division), Court No. 2, Agartala, West Tripura against Sudhansu seeking declaration of title, confirmation of possession and perpetual injunction restraining the Defendant, disturbing in any way his peaceful possession in certain lands appertaining to C.S. plot No. 4927 of Khatian No. 1874 under Mouza Agartala, Sheet No. 6. The disputed land belonging to that plot is a narrow passage measuring 24 ft. in length from north to south and 3 ft. in breadth from east to west.

Sudhansu, the neighbour and Defendant, not only in his defence put up a hostile claim to the said passage, but preferred to institute Title Suit No. 98/1990, about 2 years after Asish filed his suit, in the same court seeking declaration of his title and recovery of possession of the passage showing its length 70ft from north to south and breadth 5 ft. from east to west, claiming that the same appertained to

his lands of C.S. plot No. 4929 and 4930 of Khatian No. 1875. Ashis having no claim over lands of C.S. plot No. 4929 and 4930 and Sudhansu also having no claim over the lands of C.S. plot No. 4926 and 4927, the dispute to be resolved by the court was whether the said patch of lands appertained to the lands of plot Nos. 4926 and 4927 of Ashis or plot Nos. 4929 and 4930 of Sudhansu.

During the pendency of the above two suits, both Ashis and Sudhansu died leaving behind their legal heirs to continue the long drawn battle.

3. The short fact, which is not in dispute, is that on the death of one Purna Sashi Singha, her only son Ashis Kr. Singha and her five daughters inherited certain lands measuring 8 gandas 2 karas 1 kranta and 11 dhurs appertaining to C.S. Plot Nos. 4926 and 4927 of Khatian No. 1874 under Mouja Agartala, sheet No. 6 and they were comfortably in possession of the same. The disputed patch of land lying on the western boundary of the said lands was vacant. On the further west Sudhansu had a small passage and a "dokanbhiti" on his lands of plot Nos. 4929 and 4930, who at the relevant time alleged to have tried to encroach the vacant passage of Ashis by extending the "dockanbhiti", thus giving rise to the proceeding instituted by Ashis and his unmarried sister.

It is the definite case of Sudhansu, as pleaded in his written statement in the suit filed by Ashis and in the plaint of the suit filed by him (registered as T.S. No. 98/1990) that after the death of his father Ram Lal Roy, the properties left by him were partitioned amicably among his sons, two of whom, Sudhansu and Amarendra, got in their share 14 gandas of lands which were recorded in C.S. Plot Nos. 4935, 4936, 4929 and 4930 of Khatian No. 1875. The lands of plot Nos. 4929 and 4930 of Sudhansu and Amarendra were adjacent to lands of plot Nos. 4926 and 4927 of Ashis and his sisters. It was contended in his suit by Sudhansu that in 1985 Ashis dispossessed him from the disputed land measuring 70 ft. in length and 5 ft. in breadth and, therefore, he prayed for recovery of possession of the said lands by evicting Ashis therefrom.

4. The trial court after careful appreciation of the evidence adduced by the parties dismissed the suit of Sudhansu and decreed the suit of Ashis by a common judgment. The reasons for dismissal of Sudhansu's suit in brief are as follows:

i) Though pleaded that Sudhansu and Amarendra jointly became owner of 14 gandas of lands of their father, it was not pleaded how out of the same Sudhansu became owner of lands measuring 3 gandas 2 karas and 19 dhurs of schedule-B of his plaint to which the disputed land appertained and in such a situation why Amarendra was not made a party;

ii) Though averred that Sudhansu was dispossessed from the suit land in 1985, the facts and the manners of dispossession were not pleaded.

5. As regards the suit filed by Ashis, the trial court refused to declare his title over the same as no documentary evidence in support of his claim was

forthcoming. But the admitted position being that he had been possessing the suit land since January, 1985 without any interruption, his possessory right was declared with injunction restraining his opponents from entering into or otherwise disturbing him or his legal heirs in peaceful enjoyment of the same.

6. The common judgment of the trial court was assailed by the legal heirs of Sudhansu by means of two Title Appeal Nos. 64/1996 and 65/1996, which again came to be disposed of by a common judgment passed by learned District Judge, West Tripura, Agartala on 30.3.1998. One argument advanced by the Appellants before the appellate court is that the report of the Survey Commissioner was totally ignored by the trial court, which resulted in a perverse finding that the suit land did not appertain to the lands of plot Nos. 4929 and 4930 of Sudhansu. The appellate court noticed that the report of the Survey Commissioner was not discussed by the trial court, presumably the aid of the said report was not found necessary in view of the admitted position that the disputed land was comfortably in possession of the original Respondent (Ashis Kumar Singha) and his legal heirs since 1985 and the decree of possessory right in their favour was recorded on the basis of the admitted position only. However, the appellate court discussed in details the report of the Survey Commissioner and found to reason to take a view that the disputed strip of land appertained to the lands of plot Nos. 4929 and 4930. This finding on the report of the Survey Commissioner's report has been recorded by the first appellate court after showing the discrepancy between the evidence of P.W. 3 and the observations of the Survey Commissioner in his report marked Ext. C. As regards the decree of possessory rights and perpetual injunction rendered by the trial court, which was passed on admitted facts, the first appellate court found no reason to interfere with the same. Both the appeals, thus, were dismissed.

7. Undaunted, the legal heirs of Sudhansu challenged the concurrent findings by filling two appeals against same common judgments of the courts below on same grounds. The appeals were admitted on 6.8.1998 by this Court providing that the substantial question of law could be as enumerated in the memo of appeal. In the memo of appeal, the substantial question of law formulated by the Appellants are as follows:

- a) The misinterpretation of the title deed i.e. the partition deed Ext. 3, dated 3.5.56 and the certified copy of the finally published Khatians and map Ext. 1 and 2 in respect of the suit land submitted by the Plaintiff Appellants.
- b) Misappreciation of the documentary and oral evidences adduced by the Plaintiff Appellants and the Defendant Respondent Nos. 1(a) to 1(d).
- c) Misinterpretation of law relating to the defect of parties in the suit of the Plaintiff Appellants vide No. T.S. 98/90.
- d) Misinterpretation of the Commissioner's Report.

8. It would appear from above that misinterpretation of partition deed, khatian,

appeal and documentary evidence, law relating to defects of parties and the Commissioner's Report were presented as substantial question of law without elaborating what interpretation on those documents were recorded by the Courts below and how they amounted to misinterpretation.

9. I have heard Mr. D. R. Choudhury, learned Counsel for the Appellants and Mr. S. Laskar, learned Counsel for the Respondents.

10. As noticed above, the concurrent findings leading to the declaration of possessory right and permanent injunction in favour of the Respondents herein was from the premises that admittedly Ashis was in peaceful possession of the disputed land since 1985. Ashis was denied the declaration of title, as he could not adduce adequate evidence to show his title by way of inheritance over the suit lands. Similarly, failure on that part of Sudhansu to show how he came to be the owner of the suit land, led the court below to dismiss his suit.

11. Mr. Laskar, learned Counsel for the Respondents strongly argued that no substantial question of law at all exists as would appear from the questions formulated by the Appellants harping on alleged misinterpretation which is devoid of any details as to how those questions could be substantial in order to invoke jurisdiction of this Court in a Second Appeal. In support of his submission, he has placed reliance on the following decisions of the Apex Court touching on jurisdiction of High Court in entertaining a Second Appeal:

1) Commissioner Hindu Religious and Charitable Endowment Vs. P. Shanmugama and Others, and

2) Harvinder Singh and Ors. v. Pritam Kaur and Ors. reported in (2005) 11 SCC 428.

In P. Shanmugama (supra), the Apex Court observed in para-6 as follows:

6. At the very outset, we notice that, though the High Court was deciding the second appeal u/s 100 of the Code of Civil Procedure, it failed to act in accordance with the requirements of Section 100. It is trite law that u/s 100 CPC a High Court can entertain a second appeal only if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 provides that where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. Sub-section (5) stipulates that the appeal shall be heard on the question so formulated and the Respondent shall at the hearing of the appeal be allowed to argue that the case does not involve such question. The mandatory requirements of this provision of law have been totally flouted by the High Court. The High Court has not indicated in the long judgment as to which was the substantial question of law, if any, considered, nor has it formulated the substantial question of law on which the decision in the second appeal was being given. The High Court has proceeded as if it were deciding a first appeal against a decree in original proceedings. On this ground alone the judgment is liable to be interfered with.

In Pritam Kaur (supra), the Apex Court has explained the circumstances when interference in a Second Appeal is not called for. In the case of specific performance, the decree passed by the trial court was reversed by the first appellate court. The Second Appeal arising therefrom was dismissed by the High Court of Punjab and Haryana, as the findings recorded by the first appellate court were on facts and no substantial question of law did at all arise. This view was approved by the Apex Court in the above noted case.

Mr. Laskar also relied on the decision in M/s. Praga Tools Corporation Ltd. Vs. Smt. Mahboobunnissa Begum and Others etc. etc., where the Apex Court observed that the report of a Commissioner providing only aid to the trial court in arriving at a finding. In appropriate cases such aid may not be considered necessary at all. In view of the reasons recorded by the first appellate court about the report of the Survey Commissioner, as noticed above and the decree of possessory right being on admitted facts only, no further discussion on the issue should detain me.

12. Mr. Choudhury, learned Counsel for the Appellants tried to bring home the point that substantial question of law strongly exist in view of the fact that there was a misreading of the evidence and misconstruction of law. In support of this submission, he has placed reliance on a decision of the Apex Court regarding appropriate situation when concurrent finding of the courts can be interfered with, which is in Ramlal and Another Vs. Phagua and Others, of the said judgment, the observation reads:

19. In Mohan Lal v. Nihal Singh, the trial court dismissed the suit for the reasons recorded therein on the basis of the record and oral evidence. The lower appellate court, as noticed earlier, had not considered oral and documentary evidence properly. The lower appellate court which is the final court of fact mechanically confirmed the findings of the trial court and upheld the judgment of the trial court dismissing the suit. The High Court for the cogent and convincing reasons recorded in the judgment has rightly interfered with the concurrent findings of both the courts. In our view, both the lower courts have concurrently erred in not appreciating the oral and documentary evidence properly and, therefore, the High Court is at liberty to reappraise the evidence and record its own conclusion for reversing the orders passed by the lower court. The judgment of this Court in the case of Mohan Lal v. Nihal Singh cited by the learned Counsel for the Appellant will not be of any assistance to the Appellant herein.

13. In support of his further submission that in a case of perverse finding arising from misreading of evidence and misconstruction of documents, the High Court can definitely interfere in a Second Appeal, Mr. Choudhury has placed reliance on a decision of the Delhi High Court in Sh. S.B. Chatterjee Vs. Smt. Meena Ahuja, The relevant part of the said decision contained in para-15, reads as follows:

15. Counsel for the Respondent has mainly rested his arguments on the plea that any decision on facts reached by the first appellate Court is final and the High

Court cannot look into the same and has cited *Mattulal Vs. Radhe Lal*, and *Kailash Kumar v. Dr. R.P. Kapur* reported (1994) 54 DLT 342 . He appears to have put a very extreme proposition that even an inference of law based on facts proved or contrary to the evidence proving the facts cannot be interfered with. It is settled law that a conclusion based on misreading of evidence and misconstruction of a document is a question of law and can be corrected in second appeal. A reference in this regard is made to the decisions reported as AIR 1981 All 499 (sic) (503,504), 1979 All LJ (NOC) 54, *Govind Lal Chawla Vs. C.K. Sharma and Others*, and *Rameswaram Devasthanam Vs. Secretary of State and Others*, Similarly, the ordinary meaning of words is a question of fact but the effect of the words is one of law. Reliance in this regard is placed on the decision reported as AIR 1928 PC 243 and AIR 1950 p&h 90 In the present case I find that the inferences of the first appellate Court are perverse and it has reached an inference contrary to and/or based on misreading of evidence on record. Therefore, in the present case also such errors can certainly be corrected by the High Court in the second appeal. In any case, I feel that in the face of the law laid down by Hon"ble Supreme Court where-from the aforesaid principles emerge, I find that no case for entertainment of the objections was made out since they appear to be in the nature of an afterthought, lacking in bona fides and were filed very much beyond the period of limited tenancy created. The Tribunal has also been misled by the argument that the premises were not let out for residential purpose. Such finding is also contrary to the facts on record (including statement of the parties) and is contrary to the evidence.

14. The legal position set out thus, may lead to focus on the factual situation discussed above to convincingly show that the Appellants have totally failed to prove how the concurrent findings of the Courts below about possessory rights of the Respondents in the suit lands on admitted facts can be said to be perverse or how the dismissal of claim of the Appellants over the lands of C.S. Plot Nos. 4929 and 4930 advanced by their predecessor, in the absence of any documentary evidence in support of the claim, can be said to be erroneous. I, therefore, find no reason to interfere with the same.

15. For the discussions and reasons aforementioned, both the Second Appeals appear to have no merit and consequently, the same are dismissed leaving the parties to bear their own cost.