

(2015) 11 TP CK 0027
In the Tripura High Court
Case No : RSA 27 of 2010

Prasanta Biswas and Others

APPELLANT

Vs

Sachindra Chandra Ghosh and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, 100

Citation : (2015) 11 TP CK 0027

Hon'ble Judges : Utpalendu Bikas Saha, J.

Bench : Single Bench

Advocate : D. Chakraborty, Sr. Advocate and H. Laskar, Advocate, for the Appellant; S.M. Chakraborty, Senior Advocate and B. Banerji, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Utpalendu Bikas Saha, J.—The instant second appeal is filed by the appellants (defendant No. 7 and 8) against the judgment and decree dated 24.03.2010 passed by the learned Additional District Judge (Court No. 3), West Tripura, Agartala in Title Appeal No. 43 of 2003 affirming the original decree dated 07.08.2003 passed by the learned Civil Judge (Senior Division), Court No. 2, West Tripura, Agartala in Title Suit No. 82 of 2001 decreeing the suit of the plaintiff-respondents.

2. Heard Mr. D. Chakraborty, learned senior counsel assisted by Mr. H. Laskar, learned counsel appearing for the appellants as well as Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. B. Banerjee, learned counsel appearing for the respondents.

3. The instant second appeal was admitted on the following substantial question of law-

"(i) Whether the judgment and decree dated 07.08.2003 passed by the learned Civil Judge, Senior Division, Court No. 2, West Tripura, Agartala in Title Suit No.

82 of 2001 affirmed by the appellate decree dated 24.03.2010 passed by the learned Additional District Judge (Court No. 3) West Tripura, Agartala in Title Appeal No. 43 of 2003 suffers from perversity?"

4. Facts leading to the filing of the instant second appeal may be summarized, as under:

"The plaintiff-respondents filed the Title Suit in question before the learned court below seeking declaration of title, cancellation of the sale deed, recovery of khas possession and consequential reliefs. Their case was that they purchased the suit land from the defendant-respondents No. 3 to 8 herein who were the defendants No. 1 to 6 in the Title Suit through registered sale deed bearing No. 1-4308 dated 07.08.1998 on payment of the consideration money of Rs. 1,20,000/- and got delivery of possession on that day itself. Thereafter, said defendants fraudulently transferred the suit land measuring 0.12 acres at Mouja-Badharghat to the defendants No. 7 and 8 (appellants herein) by a registered sale deed No. 1-7266 dated 20.08.1999. After the execution of the fraudulent sale deed, the defendants No. 7 and 8 tried to enter into the suit land but failed in their bid due to resistance offered by the plaintiffs. On 07.10.1999, the defendants No. 7 and 8 made another attempt to dispossess the plaintiffs from the suit land. Thereafter, the plaintiffs filed an application seeking injunction against the defendants, and by order dated 17.11.1999 passed in case No. Misc. 81 of 1999 arising out of Title Suit No. 189 of 1999, the learned court below restrained them from entering into the suit land but flouting that order, the defendants dispossessed the plaintiffs from a portion on the southern part of the suit land measuring 0.12 acres."

5. The defendant No. 1 to 8 contested the case by filing written statement denying the allegation of the plaintiffs. Their case was that as per the recitals of the sale deed of the plaintiffs, the defendants No. 1 to 6 were the owners of lands measuring 0.44 acres at Mouja- Badharghat and Madhupur which were situated side by side. Vendors of the plaintiffs, i.e. the defendants No. 1 to 6 sold 0.20 acres of land to one Gouranga Choudhury within Mouja- Madhupur on the adjacent west of the purchased land of the plaintiffs through registered sale deed on 03.09.1997 and as per the recital of the sale deed of the plaintiffs their land was bounded on the west by the land of said Gouranga Choudhury. Thus, according to the defendants, the purchased land of the plaintiffs was situated partly within Mouja- Madhupur and partly within Mouja-Badharghat and the rest of the land of their vendors within Mouja-Badharghat was situated on the southern side of the land of the plaintiffs which was described in the schedule of the plaint. It is the further case of the defendants that though the purchased land of the plaintiffs fell partly within Mouja- Badharghat and partly within Mouja- Madhupur, in the sale deed, they mentioned the Khatian number and C.S. plot number of western part of their purchased land within Mouja- Madhupur. Taking advantage of that omission, the plaintiffs were claiming the remaining portion of the land of their vendors within Mouja- Badharghat situated on the

adjacent south of their purchased land. It is also the case of the defendants that this land measuring 6 gandas was sold to the defendants No. 7 and 8 by the defendants No. 1 to 6 through registered sale deed bearing No. 1-7266 dated 20.08.1999 and the possession was delivered. According to the defendants, the southern boundary of the plaintiffs' purchased lands also reveals that their vendors had some lands there which was lawfully transferred to the defendants No. 7 and 8. Thus, it was sought to be established that the plaintiffs had no right, title and factual possession over the suit land, and, therefore, they prayed to dismiss the suit.

6. Considering the pleadings of the parties and after hearing the learned counsel on both sides, the following issues have been framed:

"(i) Is the suit maintainable in law?

(ii) Is the sale deed dated 20.8.1999 executed by the defendant Nos. 1 to 6 in favour of the defendant Nos. 7 and 8 liable to be cancelled?

(iii) Have the plaintiffs' right, title and interest on the land described in the schedule of the sale deed dated 20.8.1999?

(iv) Are the plaintiffs entitled to get decree for recovery of khas possession of land described in the schedule of the sale deed dated 20.8.1999?

(v) Are the plaintiffs entitled to the decree as prayed for?

(vi) To what relief relieves the parties are entitled?"

7. On the basis of the oral and documentary evidence adduced by the parties, the learned court below decreed the suit declaring right, title and interest of the plaintiffs over the suit land, recovery of khas possession of the "B" schedule land and perpetually restrained the defendants and their agents from disturbing the possession of the plaintiffs in the suit land and the sale deed bearing No. 1-7266 dated 20.08.1999 was declared void and it was accordingly ordered to be cancelled.

8. Being aggrieved by the judgment and order of the learned trial court, the defendant-appellants preferred an appeal before the learned District Judge, West Tripura, Agartala which was subsequently transferred to the court of the learned Additional District Judge (Court No. 3) West Tripura, Agartala. The learned Additional District Judge considering the evidence on record and submission of the learned counsel of both the parties as well as the written arguments of the parties affirmed the judgment and decree passed by the learned trial Court.

9. Dis-satisfied with the impugned judgment and order of the first appellate court, the defendant no 7 and 8, the appellants herein preferred the instant second appeal against the concurrent findings of the learned courts below.

10. Mr. Chakraborty, learned senior counsel appearing for the defendant-appellants while urging for setting aside the judgment of both the courts below

submits that the courts below failed to consider the documentary evidence where the elements were available and the learned first appellate court erred in law in accepting the identity of the suit land on the face of the objection raised by the defendants in their written statement as regards the identity thereof. He further submits that the defendant-appellants filed application before the learned trial Court for holding local investigation under Order XXVI Rule 9 of the CPC to ascertain the location and situation of the suit land due to objection raised by the plaintiff-respondents and the learned trial Court rejected the application for local investigation and the order of rejection was affirmed by the Hon"ble High Court in CRP No. 53 of 2003. He finally submits that the judgments of the lower appellate court as well as the trial court are perverse for non-consideration of the documents on record.

11. Mr. SM Chakraborty, learned senior counsel appearing for the plaintiff-respondents submits that non-acceptance of the documents filed by the defendants is a matter relating to finding of facts. The finding of facts concurrently recorded by the trial court as well as by the lower appellate court cannot be legally upset by the High Court in a second appeal under Section 100 of the CPC unless it is shown that the findings are perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion. In the instant case, the appellants failed to show as to how the judgments of the learned first appellate court and the trial court are perverse. Admittedly the defendant appellants preferred the instant second appeal against the concurrent findings of the courts below.

12. This court has gone through the submission of the learned counsel appearing for the parties and also the judgments passed by the courts below. The learned trial Court on the basis of the oral and documentary evidence adduced by the parties decreed the suit declaring the right, title and interest of the plaintiffs over the suit land, recovery of khas possession of the "B" schedule land and perpetually restrained the defendants and their agents from disturbing the possession of the plaintiffs in the suit land and the sale deed bearing No. 1-7266 dated 20.08.1999 was declared void and it was accordingly ordered to be cancelled and the appellate court affirmed the findings of the learned trial court on fact.

13. After going through the judgments of both the courts below, this Court is of the considered opinion that neither of the courts below has committed any wrong while granting the reliefs to the plaintiff-respondents.

14. It also further appears from the Memo of Appeal that the appellants though used the word "perversity" but did not state how and in what manner the judgments of the learned courts below are perverse. In absence of any specific reference to the perversity, it would be very difficult for a court of law to accept the plea of "perversity". In Vishwanath Agrawal Vs. Sau. Sarla Vishwanath Agrawal, , the Apex Court while considering the Section 100 of the CPC taking note of Vidhyadhar Vs. Manikrao and Another, held that:

"it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion."

15. In view of the above, no merit is found in the appeal. Hence, it is dismissed. No order as to costs.

Prepare decree accordingly.

Send down the LCRs.