
(2019) 06 GAU CK 0065
In the Gauhati High Court
Case No : Revision Petition No. 183 Of 2018

Rabindra Chandra Das

APPELLANT

Vs

Md Saifuddin Ahmed And 3 Ors

RESPONDENT

Date of Decision : 25-06-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 114, Order 7 Rule 14, Order 41 Rule 31,
Order 47 Rule 1, Order 47 Rule 1(1)
Assam Non- Agricultural Areas Tenancy Act, 1955 — Section 5

Citation : (2019) 06 GAU CK 0065

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : P Choudhury, P Khataniar

Final Decision : Dismissed

Judgement

Heard Mr. P. Chowdhury, the learned counsel for the petitioners as well as Mr. P. Khataniar, the learned counsel appearing for the respondents.

2) This review application under Section 114 read with Order XLVII Rule 1 of the Civil Procedure Code is directed against the second appellate judgment, order and decree dated 05.06.2017, passed by this Court in R.S.A. No. 87/2007.

3) The learned counsel for the petitioner had advanced his submissions in the entire post lunch sessions on 18.06.2019 and 19.06.2019. His reply argument was done by consuming entire post lunch session on 24.06.2019. The learned counsel for the respondent had concluded his argument by consuming entire post lunch session on 20.06.2019.

4) The learned counsel for the petitioner had submitted that the appellant had assailed the judgment of this Court before the Supreme Court of India by filing SLP (Civil) Diary No(s) 24506/2018 and the said Hon'ble Court after hearing the learned counsel granted leave to the petitioner to approach this Court by way of review and thereupon the SLP was withdrawn.

5) It is submitted that the records of the learned Trial Court as well as First Appellate Court is required to be called for and re-examined again because the petitioner had applied for certified copy of Ext.5, but the certified copy was not readable. It is also submitted that while deciding first substantial question of law, this Court had referred to the order dated 11.12.1991, in respect of which the petitioner had no knowledge and accordingly, he could not be instructed on the said aspect. However, it is submitted that the records reveal that the petitioner had objected to the admissibility of Ext.5, which would appear from reading the cross examination of PW-1, which would show that when the said exhibit was exhibited, the petitioner had objected and his objection was recorded by the learned Trial Court. Hence, there was an error apparent on the face of the records.

6) It is submitted that the respondents- plaintiffs could not prove their title, yet the suit was decreed. It is also submitted that the suit was filed as a Title Suit and the suit was not a eviction proceeding under the provisions of Assam Urban Areas Rent Control Act, 1972 as such, without proving the title, the suit could not have been decreed. It is also submitted that there were two separate and distinct constructions out of which the suit was for Municipal Holding No. 144, standing in the name of plaintiff No.1, but the Municipal Holding No. 133 was in the name of the petitioner, as such, without declaration of title, the learned trial Court had wrongly held that both the holdings were for same premises and, as such, suit was wrongly decreed. It is also submitted that the Exhibit Nos. 2, 3 and 4 were also not admissible and could not be the basis to decree the suit. It is also submitted that there was no statement in the plaint that the respondents were the owners of the suit land. The learned counsel for the petitioner has also referred to the schedule of the suit property to explain that the suit land was not identifiable. Accordingly, it is submitted that the decision by the learned Trial Court, the learned First Appellate Court as well as by this Second Appellate Court were liable to be re-looked as the defect goes to the root of the matter. To canvass the point that the title must be proved, the learned counsel for the petitioner has placed reliance on the case of Indira Vs. Arumugam & Anr., (1988) 1 SCC 614.

7) It is submitted that the agreement (Ext.5) was compulsorily registrable document and, as such, the same could not have been read in evidence. Moreover, it is submitted that the Ext.5 could not be proved in accordance with law. It is submitted that in respect of Ext.5, the predecessor- in- interest of the plaintiffs who had executed the said agreement (Ext.5) had expired.

However, no attesting witness had been examined. On the point of examining the attesting witnesses, the learned counsel for the petitioner had placed reliance on the case of Guru Amarjit Singh Vs. Rattan Chand & Ors., (1972) 4 SCC 349; and Dhiren Bailung Vs. Must. Bhukuti & Ors., AIR 1972 Gau 44.

8) It is also submitted that the respondents- plaintiffs had not proved the bona fide requirement for the suit premises. It is also submitted that

the jamabandi (land revenue record) of the suit land was not proved, rent receipt was not proved and title deeds of the plaintiffs were not proved. Hence, for the said reasons the suit could not have been decreed.

9) It is submitted that the petitioner had never canvassed the plea of adverse possession, but the judgments passed by the learned Courts below had erroneously dealt with plea of adverse possession as if the said plea was taken by the petitioner. Hence, it is submitted that for incorrect appreciation of facts, the review jurisdiction should be exercised as the issue goes to the root of the matter.

10) It is submitted that facts pleaded in the suit and the examination of evidence led by the plaintiffs would itself reveal that the suit was barred by limitation, which was an error apparent on the face of record.

11) The learned Counsel for the petitioner has also made his submissions on all the 50 grounds taken in this review petition.

12) On the power of review, the learned counsel for the petitioner has placed reliance on the case of Board of Control For Cricket in India & Anr. Vs. Netaji Cricket Club & Anr., (2005) 4 SCC 741; Santosh Hazari Vs. Purushottam Tiwari (deceased) by LR's, (2001) 3 SCC 179; Soumitra Panda Vs. A.K. Agarwal, AIR 1994 SC 165; Hori Lal Vs. Sharwan Kumar, AIR 1995 Del 85.

13) Per contra, the learned counsel for the respondents has submitted that the essential ingredients for applying for review as contained in the provisions of Order XLVII Rule 1(1) CPC was neither pleaded nor urged by the learned counsel for the petitioner. It is submitted that the learned counsel for the petitioner has advanced his argument as if a suit was being heard before this Court. It is submitted that merely because the learned counsel for the petitioner was not briefed regarding existence of order dated 11.12.1991, records cannot be called because the said fact could have been easily verified by inspecting the trial Court records if the learned counsel for the petitioner had any reservations on the finding recorded by this Court in respect of substantial question of law No.1. It is submitted that until now all the three Courts, i.e. the learned Trial Court, the learned First Appellate Court and also this Hon'ble Court could read and interpret the contents of Ext.5 and decided the matter. Hence, it is submitted that merely because the certified copy of Ext.5, as issued to the petitioner is not readable to him, would not be a sufficient ground to call for the of records. It is submitted that assuming but not admitting that any finding of this Court on any of the three substantial questions of law was not correct, every error in judgment cannot be corrected in review as if it were acting as appellate Court.

14) It is submitted that in ground No.21 of the Memo of First Appeal, the petitioner had specifically urged as follows - "21. For that the learned Trial Court illegally rejected the plea of adverse possession set up by the appellant which was proved by evidence and materials on record and illegally passed the impugned judgment and decree against the defendant which is not sustainable in

law." Hence, the learned counsel for the petitioner cannot set up a new plea in this review petition, contrary to the plea taken in the first appeal.

15) It is further submitted that in the plea of the petitioner before the learned trial Court as well as before the First appellate Court was that he was seeking protection under Section 5 of the Assam Non- Agricultural Areas Tenancy Act, 1971. Hence, the plea was that the petitioner had raised structures on the tenanted land, as such, he cannot be evicted. Thus, the tenancy was an admitted fact. However, the plea of the respondents- plaintiffs was that the petitioner was tenant in respect of Municipal Holding No. 144 and he was permissive occupier in respect of Municipal Holding No. 133, the petitioner was compelled to file a regular suit for evicting the petitioner. He has also submitted that in this State even an eviction suit under Assam Urban Areas Rent Control Act, 1972 was registered as a regular "Title Suit". Hence, the finding on substantial question of law was sustainable and there was no error apparent on the face of the record.

16) It is submitted that the second substantial question was also rightly decided because the First Appellate judgment disclosed that only three points were argued, which were all dealt with by the learned First Appellate Court, and that as per the ratio laid down by the Supreme Court of India in the case of Thakur Sukhpal Singh (ibid), such course of action was permissible. Hence, there was no plausible ground for review was made out.

17) The learned counsel for the respondents has submitted that while dismissing the appeal, this Court had issued certain directions, which have not been complied with. It is submitted that without compliance of those conditions, the petitioner has first approached the Supreme Court of India, and then sought liberty to withdraw the SLP to approach this Court and in the process, the execution of the decree has been delayed with the respondents being denied the fruits of 32 years of litigation so far arising out of Title Suit No. 48/1987.

18) There are 50 grounds running to about 44 pages on which this review petition is filed. These grounds are given under the following headings, viz., (i) Analysis of Ext.5; (ii) limitation of the suit; (iii) reliefs in suit could not be granted; (iv) analysis of the PWs depositions, further sub-classified under the sub-head of plaint, and presence of PWs; (v) analysis of the pleadings of the petitioner and the impugned order, further sub-classified under the sub-head of burden of proof, and adverse possession. Hence, this order is not burdened by narrating the said grounds of review.

19) It may be stated that the connected second appeal was admitted for hearing by order dated 22.08.2007 on the following substantial questions of law, as formulated by this Court:-

"1. Whether a document not produced by the plaintiff in accordance with order VII Rule 14 CPC can be admitted into evidence without the leave of the Court?

2. Whether the judgment and decree passed by the learned Lower Appellate

Court are illegal for ignoring the mandatory provision of Order 41 Rule 31 CPC?

3. Whether the lease created under exhibit-5 was a lease for year to year lease and if so, whether the learned courts below committed illegality in decreeing the suit by applying the provisions of Assam Urban Areas Rent Control Act?

4. Any other substantial question of law with the permission of this Hon'ble Court."

20) As no further substantial questions were pressed into service, there was no occasion for this Court to formulate any other substantial questions of law and the said second appeal was heard on the 3 (three) substantial questions of law.

21) In brief i.e. without reiterating the details already available in the judgment, the three substantial questions of law were answered as follows:-

1. On perusal of the LCR, this Court had held in paragraph 16 of the impugned judgment that "... Moreover on examination of records, it is seen that along with other 6 documents (total 7 documents), the copy of agreement dated 01.03.1974 consisting of 2 pages was filed along with a list, which was received by the learned Trial Court under its rubber stamp dated 16th August, 1991. The said documents and list was accompanied by petition No. 3892/91 dated 16.08.2001 to accept the documents and after hearing the learned Trial Court had accepted the documents by order dated 11.12.1991. Hence, the said plea is found to be not sustainable on the basis of record and the said first substantial question of law is answered in the affirmative and against the appellant by holding that all the documentary exhibits were in fact submitted by the respondent and duly admitted by the learned Trial Court by an order dated 11.12.1991 and, as such, there is no bar for being admitted into evidence."

2. In paragraph 17 of the said second appellate judgment, this Court had decided the second question of law by holding that "... it is evident from the bare perusal of the first appellate judgment that the appellant had only argued on three points, which was duly addressed and/or answered by the said learned Court. There is no material before this Court to enable this Court to arrive at any conclusion that more than 3 points were argued by the appellant. Hence, in the opinion of this Court, there was no necessity for the lower appellate court to formulate any points of determination. The second substantial question of law is answered in the negative and against the appellant by holding that as the appellant had not urged any point other than three points before the First Appellate Court and the said learned Court had considered and answered those points, it would not be necessary to formulate points of determination and address it again. In this regard, this Court deems it appropriate to quote few relevant paragraphs 5, 6, 7, 8, 11 and 16 of the judgment of Thakur Sukhpal Singh [(supra), i.e. Thakur Sukhpal Singh V. Thakur Kalyan Singh, (1963) 2 SCR 733: AIR 1963 SC 146 (3 Judge Bench] ..."

3. In respect of the third substantial question of law, this Court had held in

paragraph 18 that "... the tenancy was found to be for a fixed term of 11 months from 01.03.1974 to 01.03.1975 and, as such, there was no illegality in decreeing the suit by applying the provisions of the Assam Urban Areas Rent Control Act, 1972."

22) In the aforesaid context, the learned counsel for the petitioner could not satisfy this Court that which of the plea urged by them in course of hearing of the second appeal was vitiated by error apparent on the face of record, or which fact or document was later on discovered, which despite due diligence could not be produced at the time when the order was made. The learned Counsel for the petitioner has also not made any submissions that what mistake in the order was apparent on the face of the record. In the opinion of this Court, a wrong reading or interpretation of any exhibited document may constitute a ground for appeal, but it would not confer upon this Court power to correct such error by exercising review jurisdiction.

23) This Court is constrained to hold that the grounds taken up for this review petition appears to be new ground to challenge the judgment and decree passed by the learned Trial Court and the learned First Appellate Court. However, the grounds set forth for review are not leading to any inference that the ingredients to exercise review jurisdiction exist in this petition.

24) In the case of *Nehali Panjiyara Vs. Shyama Devi*, (2002) 10 SCC 578, the Supreme Court of India has held if in a review petition entirely a new issue is raised, interference in review proceedings on the said point was not proper. In the case of *Surendra Kumar Vakil & Ors. Vs. Chief Executive Officer, M.P. & Ors.*, (2004) 10 SCC 126, the Supreme Court of India has held that a point that has been heard and decided cannot form a ground for review even assuming that the view taken in the judgment under review is erroneous. Discussing the scope and ambit of exercising review jurisdiction, the Supreme Court of India, in the case of *Sasi (Dead) through LRs. Vs. Aravindakshan Nair & Ors.*, (2017) 4 SCC 692, held that mere erroneous decision is distinguished from decision which could be characterized as vitiated by error apparent on the face of record.

25) In the case of *Patel Narshi Thakershi Vs Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844, the Supreme Court of India had held It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. However, in this case, the said parameters do not exist.

26) In the case of *Col. Avtar Singh Sekhon Vs Union of India & Ors.*, AIR 1980 SC 2041, it was held by the Supreme Court of India that review is not a routine

procedure but an application for review could be entertained when there is material error manifest on the face of the earlier order resulting in miscarriage of justice. Similarly, in the case of S. Nagaraj & Ors. Vs. State of Karnataka & Ors., (1993) Supp (4) SCC 595, it was held by the Full Bench of Hon'ble Supreme Court that rectification of an order thus stems from the fundamental principles that justice is above all and it was also held that power for rectification/ review is exercised to remove the error and not for disturbing finality.

27) Therefore, in view of the discussions above, this Court is constrained to hold that there exists no ground for interfering with the second appellate judgment, order and decree dated 05.06.2017, passed by this Court in R.S.A. No. 87/2007 in exercise of powers under Section 114 read with Order XLVII Rule 1 of the Civil Procedure Code.

28) Accordingly, this review petition stands dismissed. However, there shall be no order as to cost.