
(2004) 04 GAU CK 0004
In the Gauhati High Court
Case No : Second Appel No. 99 of 1998

Ranu Chodhury @ Ajit Roy Choudhury and Others	APPELLANT
Vs	
Suresh CH. Das and Others	RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 97(1)
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, Order 41 Rule 31, 54

Citation : (2004) 1 GLT 686

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

Bench : Single Bench

Advocate : N. Chaudhury and B.W. Phira, for the Appellant; P.K. Roy Choudhury, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. N. Choudhury, learned Counsel for the Petitioner. Also heard Mr. P.K. Roy Choudhury, learned Counsel for the Respondents.

2. The following substantial questions of law were formulated by this Court at the time of admission of this Second Appeal.

1. Whether the learned Court below erred in law in holding that the suit of the Plaintiff is barred by res-judicata inasmuch as the right, title and interest of the Defendant/Appellant stood conclusively decided by the competent Court in Title Appeal No. 22/84?

2. Whether the judgment and decree of the learned Court below is bad in law for noncompliance of the Order 20 Rule 18 and Section 54 of the Code of Civil Procedure?

3. Whether the judgment and decree of the learned Court below is vitiated for noncompliance of Order 41 Rule 31 of the Code of Civil Procedure?

4. Whether the Suit of the Plaintiff was not maintainable for non impleading of

the co-sharers under the patta?

3. At the time of hearing, Mr. Choudhury has stated that he does not want to press the substantial questions of law No. 2 and 4 as noted above and accordingly he has advanced his submission only on the substantial questions of law No. 1 and 3 above mentioned. According to him, the suit of the Plaintiff ought to have been dismissed by the Court below on the count of being hit by res-judicata in as much as the issue involved in the instant Title Suit No. 192/87 had already been conclusively decided by the competent Court in Title Appeal being T.A. No. 22/84 arising out of T.S. No. 84/80 wherein title and possession in respect of the land covered by Dag No. 28 under patta 2nd R.S. 3 was finally decided in favour of the Plaintiffs/Respondents. So far the substantial question of law No. 3 is concerned. Mr. Choudhury has vehemently argued that the impugned judgment of the Appellate Court is not at all a judgment in the eye of law inasmuch as the same did not contain the procedural requirement of Order 41 Rule 31 CPC which provides that the judgment of the Appellate Court shall be in writing and shall state (a) the points for determination, (b) the decision thereon, (c) the reasons for the decision and (d) where the decree appealed from is reversed or varied, the relief to which the Appellant is entitled to. In the instant case, it is apparent on the face of the judgment itself that the learned Appellate Court failed to give a definite finding on both the question of law and on facts in the case and as such the impugned judgment cannot be said to be a decision.

4. Supporting the impugned judgment of reversal, Mr. Roy Choudhury, learned Counsel for the Respondents, has forcefully argued that the substantial questions of law so formulated and pressed into service on behalf of the Appellants in this Second Appeal, cannot be permitted to hold the field because the question of res-judicata being a question of fact was already decided by the trial Court which categorically held that the Plaintiffs/Respondents' suit was not barred by res-judicata on the ground that the issue involved and decided in T.A. No. 22/84 was not the same as was raised in the present Title Suit i.e. T.S. No. 192/87 wherein the Plaintiffs/Respondents had sought for partition and recovery of khas possession of the 2nd Schedule land which included some more land than described in the 2nd Schedule of T.S. No. 84/80 against which the T.A. No. 22/84 was preferred. Since the point of res-judicata was already decided on the basis of factual position, the same cannot be formulated to be a substantial question of law. Further he has also argued that it is not correct that there was non-compliance of the procedure laid down for writing a judgment by the Appellate Court under Order 41 Rule 31 Code of Civil Procedure. The impugned judgment of the Appellate Court apparently indicated that all the points raised and argued were decided by application of its judicial mind. According to Mr. Roy Choudhury, assuming, though not admitting, the Appellate Court did not give any reasons, a judgment of reversal cannot be said to be improper judgment merely because all the reasons given by the trial Court are not discussed, when the reasons given by the Appellate Court are cogent to justify its finding.

5. I have carefully gone through the impugned judgment and also has given anxious consideration to the rival contentions canvassed on behalf of the contesting parties. Taking all these aspects into account, it appears that the substantial question of law as regards res-judicata cannot be sustained in view of the findings of the trial Court to the effect that the instant Title Suit pertains to partition and khas possession when in the earlier T.A. 22/84, title and possession in respect of specific land had been declared in favour of the Plaintiffs/ Respondents. As such the question of resjudicata has no relevance herein on the backdrop of the factual position noticed by the trial Court.

6. On the substantial question of law No. 3 as noticed hereinabove, it is seen that the learned Appellate Court totally failed to discuss the issues raised before the trial Court. The finding of the Appellate Court was mainly based on Ext. 6, being the judgment and decree dated 12.1.87 passed in T.A. No. 22/ 84, relying on which the Appellate Court came to the conclusion that it was proved that the Court declared the title of the Plaintiffs in respect of Dag No. 28 and Exts. 7, 8, and 9 were accepted as the proof of various entries in the revenue map and jamabandis in favour of the Plaintiffs/Respondents. More interestingly, the learned Judge accepted Ext. 10 as the proof of the partition of the co-sharer of the suit patta made by the Plaintiffs/Respondent when Ext. 10 itself speaks of an order dated 3.6.87 passed by the Sub-Divisional Officer, Sadar, Silchar by which the application filed by Sri Suresh Ch. Das and others for perfect partition of land in respect of 2nd R.S. Patta 38 was rejected on the ground that the result of partition would form a separate estate for an amount of revenue less than Rs. 5 only for which the application for perfect partition was not maintainable as per provision of Section 97(1) of the Assam Land Revenue Regulation, 1886. That being so, it can be safely said that the impugned judgment appears to have been passed mechanically and without application of mind resulting in total non compliance of Order 41 Rule 31. It is settled that the first appellate judgment reversing the finding of the trial Court must contain adequate and satisfactory reasons on all the points on which the trial Court arrived at a final conclusion. A judgment which is devoid of any discussion or allusion to the reasoning of the trial Court must be deemed to be vitiated by error of procedure. The requirements of Order 41 Rule 31 CPC are being mandatory, it is incumbent upon the First Appellate Court to set out the points for determination, record the decision thereon and give its own reasons and if these provisions are not complied with, the same can well be a substantial question of law for interference in Second Appeal. In Santosh Hazari's case Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., the Supreme Court in para 15 categorically held that the judgment of the appellate Court must reflect its conscious application of mind and record findings supported by reasons on all the issues arising along with the contentions put forth and pressed by the parties for decision of the Appellate Court.

7. Since the impugned judgment of the Appellate Court failed to reflect the points for determination and its subsequent decision covering all the important

questions involved in the case and keeping in view the findings being based on wrong and incorrect appreciation of the materials available on record especially Ext. 10 demonstrating perversity writ large, this Court is inclined to interfere with the impugned judgment holding that the same is vitiated for non-compliance with the procedural requirement of Order 41 Rule 31 CPC and remand the matter to the Appellate Court for its decision on all the issues so discussed by the Trial Court following the essential of Order 41 Rule 31 Code of Civil Procedure. It is ordered accordingly. In that view of the matter, the impugned judgment is hereby set aside and quashed.

8. Considering the long pendency of the matter, the learned Appellate Court is directed to make an attempt to dispose of the matter expeditiously preferably within a period of 4 (four) months from today.

9. Send down the records forthwith.

10. In the result, the Second Appeal succeed and stands allowed to the extent indicated above. No costs.