
(2015) 06 GAU CK 0085
In the Gauhati High Court
Case No : R.S.A. No. 198 of 2004

Rash Behari Singh and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 12-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2015) 2 GLD 678

Hon'ble Judges : Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : T. Goswami, for the Appellant

Final Decision : Allowed

Judgement

Arup Kumar Goswami, J.—Heard Ms. T. Goswami, learned counsel for the appellant. None appears for the respondents. This appeal is presented against a judgment and decree dated 05.07.2004 passed by the learned Civil Judge (Sr. Divn.) No. 1, Silchar, in Title Appeal No. 36/2002 allowing the appeal and setting aside the judgment and decree dated 14.06.2002 passed by the learned Civil Judge (Jr. Divn.) No. 1, Silchar, in Title Suit No. 8/1996.

2. The case of the plaintiff, briefly put, is that the District Administration of Cachar was pressurized by the local people for establishment of a hat/bazar (market) and due to such pressure, the Block Development Officer, Lakhipur Development Block, representing the District Administration, approached the plaintiff to donate the suit land measuring 1 bigha in Dag No. 381 of 2nd R.S. Patta No. 121 of mouza-Sibpur Part-I for the benefit of the people of the locality. To honour the sentiment of the local people and to cater to the need of the local people, the plaintiff decided to gift the suit land for the specific purpose of establishment of a market on condition that if the land was not utilized for the said purpose, the land will be re-conveyed to the plaintiff. Accordingly, a gift deed was executed by the plaintiff in favour of the Government of Assam, through the Deputy Commissioner, Silchar, which was registered on 02.02.1984,

containing a recital that on failure to establish the market, the land will be re-conveyed to the plaintiff. The Block Development Officer, Lakhipur Development Block accepted the gift deed. Though initially the defendants showed some interest to establish a market, subsequently, they lost all interest and even though more than 11 years had gone by, did not even mutate the land in their favour. No fund was allotted for establishment of market and, consequently, the market did not come up thereby frustrating the very purpose of the Gift made by the plaintiff. In such circumstances, demand was made by the plaintiff for re-conveyance of the land and as there was no response, the suit was filed after expiry of notice under Section 80, CPC, praying for a decree declaring that gift deed No. 179/1984 executed and registered on 02.02.1984 is liable to be revoked and the land forming part of the gift deed as described of the Schedule to the plaint be re-conveyed by a deed of re-conveyance along with delivery of khas possession etc.

3. A written statement was filed by the defendant taking the usual legal pleas such as suit is barred by limitation; suit is barred by waiver, estoppel, acquiescence, etc. While denying the statement made in the plaint that pressure was exerted by the local people for the purpose of donation of the land, it was stated that the plaintiff voluntarily made the deed of gift. It was" also pleaded that allegations of market being not constructed is false and, in fact, market sheds were constructed by Lakhipur Development Block Authority and the market was running smoothly. However, a cyclonic storm damaged the market shed and the authorities were trying to repair and reconstruct the same. A sum of Rs. 2,11,000/- was also allotted for the purpose of repairing and other development works.

4. On the basis of the pleadings, the following issues were framed:--

"1. Is there any cause of action for the plaintiff's suit?

2. Is the suit bad for non-compliance of the provision of Section 80, CPC as well as under the principle of estoppels, waiver and acquiescence?

3. Is the suit barred by law of limitation?

4. Is the suit properly valued and requisite Court fee paid thereon?

5. Whether the gift of the suit land under the gift deed dated 2.2.1984 is revocable in terms of the deed?

6. Had the defendant failed to act upon the terms of the deed of gift for which the same was executed?

7. Is the plaintiff is entitled to a decree as prayed for?

8. What other relief (s) the parties are entitled to?"

5. During trial, plaintiff examined himself and exhibited certain documents The defendant did not examine any witness in support of their stand in the written

statement.

6. The learned trial Court came to the conclusion that the gift deed (Ext. 4) in question is revocable and that the defendant failed to construct a market on the land gifted to the State of Assam. The plaintiff had gifted the land to the defendant for the particular purpose of constructing a market for benefit of the local people and the gift deed contained condition that if no market is constructed over the suit land, the plaintiff would get back the suit land. Accordingly, the suit was decreed.

7. The learned lower Appellate Court, however, reversed the judgment of the learned trial Court holding that there was no mention of any stipulated period for construction of the market in Ext. 4 and that the defendant was at liberty to construct the market at any time according to their convenience and, therefore, there was no cause of action in favour of the plaintiff and, as such, all issues ought to have been held and decided against the plaintiff.

8. The learned lower Appellate Court also took note of the observations in injunction proceedings and, more particularly, to an order dated 21.01.1999 passed in Misc. Appeal No. 26/1996 that the defendant was at liberty to construct the market at any time as there was no specific time stipulated for construction of market in Ext. 4.

9. This appeal was admitted to be heard by an order passed on 08.12.2004 on the following substantial questions of law:--

"(1) Whether, the learned lower appellate Court misconstrued the provisions contained in the gift-deed, Ext. 4 and arrived at an incorrect finding?

(2) Whether, the learned lower appellate Court justified in taking into consideration of the findings of the proceedings of the injunction matter at the time of hearing of the appeal?"

10. Ms. Goswami, learned counsel for the appellant has submitted that when no specific time period is stipulated for the performance of specific act, such act has to be performed within a reasonable period of time. It is submitted by her that the plaintiff had donated the land with the belief that the local populace would be benefited by the establishment of a market. The finding of the learned trial Court was that no construction had taken place for the establishment of a market. By any standard, and, having regard to the purpose of the gift, it is apparent that the defendant had not done its part within a reasonable period of time, she submits. Learned counsel further submits that the finding of the learned lower Appellate Court that in absence of any time period fixed, the defendants are entitled to construct the market at any time as per their wish cannot be sustained in law. It is also submitted by her that the learned lower Appellate Court wholly misdirected in holding that there was no cause of action in view of the recitals in Ext. 4. Further contention advanced is that findings recorded in injunction proceeding is tentative in character and the same cannot be merely

dittoed while deciding the suit as has been done by the learned lower Appellate Court in the instant case.

11. I have considered the submissions of Ms. T. Goswami and have perused the materials on record.

12. It is appropriate to take up the second substantial question of law as framed by this Court at the outset.

13. Any finding or observation in a proceeding arising out of a petition for temporary injunction is tentative in character and not relevant at the time of final adjudication of the suit. The learned lower Appellate Court, no doubt, took note of the observation as recorded in the order dated 21.01.1999 passed by the learned Civil Judge (Sr. Divn.) No. 1, Silchar in Misc. Appeal No. 26/1996 arising out of an injunction petition wherein observation was made that the defendants were at liberty to construct the market at any time in absence of any stipulation of time for construction of the market in Ext. 4. But it will not be correct to say that the learned lower Appellate Court wholly relied on the aforesaid observation while deciding the suit, but it must be conceded that the learned lower Appellate Court independently came to the same very conclusion. Therefore, the contention advanced that the learned lower Appellate Court had taken into consideration the finding recorded in the injunction proceedings cannot be accepted. Accordingly, the second substantial question of law is answered against the appellant.

14. But even if the second substantial question of law is answered against the appellant, the decision of the learned lower Appellate Court regarding Ext. 4 needs to be considered under the first substantial question of law.

15. It is to be noted that in support of the written statement, defendant did not adduce any evidence and the plaintiff had demonstrated, as recorded by the learned trial Court, that no market was established. The argument of the learned counsel for the appellant before the learned lower Appellate Court was not that the market was constructed; the argument was the market could be constructed at the pleasure of the defendants in absence of any time-frame in Ext. 4. There is no dispute that there was no time-frame indicated in the Ext. 4 for the establishment of the market. The purpose for which the gift was made is already noticed. If no time limit is fixed for the performance of an act, the act in contemplation has to be performed within a reasonable time. What is reasonable time will vary from case to case. There was an urgent necessity for establishment of a market and that is the avowed purpose for which the plaintiff parted with his valuable land for construction of a market.

16. Twelve years is a long period of time and within that period, the defendants did not construct any market and therefore, I am of the considered opinion that the defendants having not constructed the said market within a reasonable period of time, the plaintiff is entitled to decree as granted by the learned trial Court. Ext. 4 has to be construed in the light of the observations as aforesaid and

not in the manner as suggested by the learned lower Appellate Court that whenever the defendants feel like constructing the market they can do so. Substantial question of law No. 1 is answered in favour of the plaintiff.

17. In the result, the appeal is allowed. The impugned judgment of the learned lower Appellate Court is set aside and quashed. Decree of the learned trial Court is restored. No costs. Registry will send back the records. Appeal allowed.