

(2014) 06 TP CK 0039
In the Tripura High Court
Case No : RSA No. 36 of 2013
Sabitri Chanda VsRakesh Das

Date of Decision : 06-06-2014

Acts Referred:

Transfer of Property Act, 1882 — Section 53A

Citation : (2014) 06 TP CK 0039

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : K.N. Bhattacharji, Sr. Advocate and Mrs. Y. Taneja (Bhattacharji), Advocate for the Appellant; S. Lodh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—Heard learned senior counsel, Mr. K.N. Bhattacharji, assisted by learned counsel, Mrs. Y. Taneja(Bhattacharji) for the appellants and learned counsel, Mr. S. Lodh for the respondent.

2. The respondent as plaintiff instituted Title Suit No. 3 of 2010 seeking recovery of possession of the suit land described in the schedule of the plaint, evicting the defendants with removal of all obstructions created by the defendants, i.e. the appellants herein. It is not disputed that the suit land belonged to the plaintiff. The defendant-appellants contended that Sachindra Chandra Chanda, the predecessor of the defendant-appellants purchased the suit land from Kishori Mohan Das, the father of the plaintiff in the year 1978 by an unregistered deed dated 23.05.1978 on payment of a consideration of Rs. 1,050/- and the possession was handed over to the predecessor of the defendants, said Sachindra Chandra Chanda. The plaintiff contended that the predecessor of the defendants was allowed to reside on the suit land on condition to vacate as and when will be asked and accordingly on permission the predecessor of defendants was residing but when the defendants were asked to vacate the suit land they refused, and therefore the suit was instituted.

Based on the pleadings of the parties the trial Court formulated five issues, namely-

- i. whether there is any cause of action?
- ii. whether the suit land is under valued by the plaintiff and that it exceeds the pecuniary jurisdiction of this court?
- iii. whether the plaintiff has got right, title and ownership over the suit land?
- iv. whether the plaintiff has been dispossessed by the defendants from the suit land and is thereby entitled to get recovery of possession of the same by evicting the defendants there from?
- v. to what other relief(s) the plaintiff is entitled?

In course of trial the plaintiff examined himself as PW1 and also examined one more witness, namely PW2, Pramode Chandra Das and proved four items of documents, namely-

Exhibit 1--Certified copy of Khatian No. 76 of Mouja-Uttar Ramchandraghat, Tahasil-Ramchandraghat.

Exhibit 2 series--The postal receipts and acknowledgment cards of the lawyer's notices.

Exhibit 3--Copy of the lawyer's notice issued by the plaintiff(subject to objection by the Ld. Counsel for the defendants).

Exhibit 4--The reply of the lawyer's notice by the defendants(subject to objection by the Ld. Counsel for the defendants).

Defendant No. 2 examined himself as DW1 and also examined four more witnesses and in support of their case proved two items of documents, namely-

Exhibit D1--Certified copy of Khatian No. 76 of Mouja-Uttar Ramchandraghat, Tahasil-Ramchandraghat.

Exhibit D2--Certified copy of the previous Khatian No. 76.

The trial Court decided the issues in favour of the plaintiff and accordingly decreed the suit. The defendant-appellants preferred Title Appeal No. 1 of 2012 in the Court of Additional District Judge, Khowai and the appeal was dismissed by judgment dated 12.04.2013. The defendant-appellants thereafter filed the present second appeal.

3. Learned senior counsel, Mr. Bhattacharji with all his usual fairness has submitted that the case, perhaps, was not properly conducted in the trial Court. He has submitted that the suit instituted by the plaintiff was barred by limitation and a plea was taken in the written statement but no issue to that effect was framed. He has also submitted that it is a case of part performance and the defendants paid the consideration money to the predecessor of the plaintiff and the predecessor the plaintiff executed a deed in favour of the predecessor of the defendants and possession of the suit land was handed over to the predecessor

of the defendants and in view of the provisions of Section 53A of the T.P. Act, the case being one of the part performance, the defendants cannot be evicted from the suit land. It is also submitted by learned senior counsel, Mr. Bhattacharji that the defendants because of the fault of the conducting learned counsel could not produce the evidence of part performance by producing the documents itself and if a scope is afforded by admitting the appeal, the defendants would be able to produce the evidence of the part performance. If the defendants are able to prove the part performance, they have a very good case to show that the plaintiff is not entitled to get a decree of recovery of possession.

4. Learned counsel, Mr. Lodh has submitted that the defendants taken a plea of limitation in their written statement but there is nothing to show as to how the suit was barred by limitation. The defendants were permissive possessors of the suit land and when they refused to hand over the possession of the suit land, the plaintiff filed the suit for recovery of possession. No issue was agitated on the point of limitation in the course of trial. It is further submitted by Mr. Lodh, learned counsel that the doctrine of part performance is to be proved by adducing document itself but no document was proved to show that there was a deed executed between the plaintiff and the defendants regarding part performance. Under such circumstances, there is no substantial question of law to be formulated, and consequently there is no scope of affording any opportunity to the defendants to adduce evidence in the case.

5. Regarding the point of limitation raised by learned senior counsel Mr. Bhattacharji, as I find in their written statement in para 3 the defendants stated--

3. That, the present suit of the Plaintiff is barred by limitation and want of parties liable for dismiss.

There is nothing more to show as to how the suit was barred by limitation. There is no elaboration in the pleadings of the defendants. The plaintiff instituted the suit for recovery of possession based on title and the title of the plaintiff is not denied. No plea of adverse possession was taken by the defendants. The defendants' case is that the predecessor of the plaintiff and the predecessor of the defendants executed a deed that the predecessor of the plaintiff sold out the land on receipt of consideration money to the predecessor of the defendants. So, under such circumstances, I have no hesitation to arrive at a conclusion that the plea of limitation was mechanically taken having no merit and material at all.

6. On the point of part performance raised by learned senior counsel Mr. Bhattacharji as I find the defendants pleaded their case in para 8 of the written statement regarding a deed alleged to have executed on 23.05.1978 between the predecessor of the plaintiff and the predecessor of the defendants. But the deed itself not produced before the Court at the time of recording evidence. Had there been any such deed the defendants would produce it and prove it in course of trial. While no such document placed on record, the plea of the defendants of the part performance of contract and the benefit claimed under the provisions

prescribed in Section 53A of the T.P. Act cannot be made available to the defendant-appellants.

7. I find no substantial question of law to be formulated in this appeal and, hence, the appeal stands dismissed.