

(2014) 02 TP CK 0028

In the Tripura High Court

Case No : Regular Second Appeal 07 of 2004

Smt. Asha Khatun and Others VsThe State of Tripura

Date of Decision : 10-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2014) 02 TP CK 0028

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

Bench : Single Bench

Advocate : A.K. Bhowmik, Mr. S. Ghosh and Mr. S.R. Dey, for the Appellant;
G.S. Bhattacharjee for the Respondent Nos. Advocate 1, 3, 4 and 5 and Mr. R.C. Debnath, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This civil second appeal is directed against the appellate Judgment and Decree dated 28.11.2003 passed by learned Additional District Judge, Sonamura, West Tripura in Title Appeal No. 07 of 2003 whereunder the learned Additional District Judge affirmed the Judgment and Decree dated 30.06.2003 passed by learned Civil Judge (Jr. Division), Sonamura, West Tripura in Case No. T.S. 14 of 2001 and thereby, dismissed the appeal filed by the appellant.

The second appeal has been admitted on the following substantial question of law:--

1. Whether the State respondents having not contested the suit the remaining respondents had any independent right to contest the same?
2. Whether the State respondents have any right to evict the appellant from the disputed land without summary enquiry u/s 15 of the TLR & LR Act, 1960?

Heard learned senior counsel, Mr. A.K. Bhowmik assisted by learned counsel, Ms. A. Banik for the appellants and learned counsel, Mr. G.S. Bhattacharjee for the respondent Nos. 1, 3, 4 and 5 and learned counsel, Mr. R.C. Debnath for respondent No. 2.

2. The appellant as plaintiff instituted Title Suit No. 14 of 2001 in the Court of Civil Judge (Jr. Division), Somanura seeking the following relief:--

(a) A decree of declaration of possessory right, and interest of the plaintiff over the suit land.

(b) A decree declaring the plaintiff is entitle to maintain possession and right to possess over the suit land.

(c) A decree for confirmation of possession of the plaintiff over the suit land.

(d) A decree for restraining the defendants from entering into the suit land and interfering with the possession of the plaintiff over the suit land by perpetual injunction.

(e) A decree for cost and incidental to the suit.

(f) For any other relief/reliefs as the Ld. Court deem fit & proper.

3. Plaintiff inter alia contended that the suit land originally belonged to one Krishna Sundar Majumder, a part of jote No. 233 of Mouza Sovapur measuring about 2.38 acres and the suit land gradually submerged in the river Gomati and thereby, diluviated. In the year 1966, a part of the suit land reappeared and the plaintiff entered into possession of that part of alluviated land and started growing crops in the land. Since the original jote was diluviated, subsequently on reappearance of the land, it was recorded in Government khas khatian. The plaintiff continued his possession by constructing some shop huts and put it on rent to different persons in a part of the land measuring .04 satak and i.e. the suit land. Those shop huts was gutted and defendant No. 4 paid some compensation of Rs. 500/- for reconstruction of the shop huts. Subsequently, in the year 2001, those shop huts were damaged by storm and thereafter, the plaintiff started construction, but the defendant Nos. 2 to 5 in collusion obstructed the plaintiff in reconstructing the huts and the defendant No. 4 also issued notice to vacate the suit land and to handover possession within seven days. Having found no other alternative, the plaintiff instituted the suit for declaration of his possessory right and also for restraining the defendants from interfering with his possession.

4. Defendant No. 1 did not contest the suit by filing any written statement. Defendant No. 2 filed written statement inter alia denying the averments made in the plaint and further stated that the suit land belonged to the Revenue Department of the Government of Tripura and the defendant No. 2 had nothing to do with the suit land, which was not handed over to the defendant No. 2 by the Revenue Department of the Government of Tripura.

5. Defendant Nos. 3 and 5 filed a joint written statement denying the averments made in the plaint and further stated that the story of plaintiffs coming into possession of the suit land in the year 1966 is false and it is further stated that after the establishment of new bus stand, the plaintiff constructed some

temporary sheds in the suit land and started his possession in the suit land and there was no assurance made by defendants to allot the suit land in the name of the plaintiff.

6. Defendant No. 4 also submitted a written statement making the same pleading as that of defendant Nos. 3 and 5.

7. The Trial Court considering the pleadings of the parties framed following issues:--

(i) Is the suit maintainable in its present form and nature?

(ii) Whether the plaintiff is in possession of the suit land?

(iii) Whether the plaintiff is entitled to a declaration of possessory right and interest over the suit land?

(iv) Whether the plaintiff is entitled to the reliefs as prayed for?

(v) To what relief/reliefs the parties are entitled to?

8. In course of trial, both side adduced evidence and after considering the pleadings and the evidence, the learned Trial Judge decided the issues against the plaintiff and dismissed the suit. Accordingly, the plaintiff filed first appeal No. T.A. 07 of 2003 in the Court of Additional District Judge, Sonamura and the appeal was dismissed by judgment dated 28.11.2003. Hence, this second appeal.

9. Learned senior counsel, Mr. Bhowmik, appearing for the appellant submitted that the plaintiff instituted the suit to protect his possessory right. He cannot be evicted, save and except the due process of law. Respondent No. 4 issued notice directing the plaintiff to vacate the suit land and to handover possession and having found no other alternative, the plaintiff instituted the suit. According to learned senior counsel, Mr. Bhowmik, the State of Tripura is the owner of the suit land, but the State of Tripura did not contest the suit by filing any written statement. Since the State of Tripura did not contest the suit, other defendants have no right to resist the claim of the plaintiff. This aspect has not been considered by the Trial Court and the First Appellate Court. He has also contended that the plaintiff being in possession, which is admitted by the defendant Nos. 3, 4 and 5, has a right to protect his possession and hence, the Trial Court would decree the suit in favour of the plaintiff.

10. Learned counsel, Mr. Bhattacharjee countering the submission of learned senior counsel, Mr. Bhowmik has submitted that the plaintiff set up contradictory claim in his plaint. Once he stated that the suit land was jote land of one Krishna Sundar Majumder and the jote land was merged in the river Gomati and diluviated gradually, but subsequently, reappeared and he started possession. He placed no evidence to show that Krishna Sundar Majumder was ever a jotedar of the suit land. The next plea taken by the plaintiff is that he was adversely possessing the suit land, but the plaintiff did not claim right, title by adverse possession. Possibly the plaintiff knew that he has actually no case of adverse

possession to prove. The plaintiff being an unauthorized occupant cannot get a decree of possessory right and injunction from a Court of equity and the Trial Court and Appellate Court rightly dismissed the suit and appeal filed by the plaintiff-appellant.

11. On the issue whether the defendant Nos. 2 to 5 can contest the suit in the absence of defendant No. 1, I am of considered opinion that the plaintiff arrayed all the defendants seeking relief against them. The entire pleading of the plaintiff is against defendant Nos. 2 to 5. Relief(s) claimed by the plaintiff is also against those set of defendants. No relief sought by the plaintiff against the defendant No. 1. In the facts and circumstances even if the defendant No. 1 did not contest the suit, the other defendants, being arrayed as such by the plaintiff have a right to contest the suit and I find no legal impediment to hold that the defendant Nos. 2 to 5 have no right to contest the suit. In my considered opinion, since defendant Nos. 2 to 5 have been arrayed by the plaintiff as defendant in the suit and since substantial relief claimed against those set of defendants, even in the absence of defendant No. 1, defendant Nos. 2 to 5 have every right to contest the suit and there was nothing wrong decided by the Trial Court as well as the Appellate Court.

12. The plaintiff instituted the suit for declaration of possessory right and for injunction against defendant Nos. 2 to 5. Admittedly, the plaintiff is not the owner of the suit land. The suit land being khas land belonged to State of Tripura i.e. the defendant No. 1. Other defendants are all State functionaries in different capacity. The plaintiff being a trespasser would maintain a suit for his possessory right against another trespasser, but a trespasser cannot maintain a suit against the rightful owner. The suit land since belonged to the State of Tripura and the plaintiff-appellant being a trespasser in the suit land cannot maintain a suit of injunction or cannot claim a decree of possessory right against the rightful owner. The plaintiff instituted a misconceived suit. Had there was nothing wrong in the notice issued by the defendant No. 4, the plaintiff would challenge it in due course according to law as prescribed in the TLR & LR Act and Rules framed thereunder. Avoiding the legal procedure, the plaintiff approached the Civil Court and in my considered opinion, the Civil Court rightly dismissed the suit and rightly refused the reliefs claimed by the plaintiff.

The Trial Court as well as the First Appellate Court duly considered the pleadings and the evidence on record. In a case of concurrent finding, the Appellate Court is not required to look into the evidence adduced during trial in details.

13. The Supreme Court in the case of Gurdev Kaur and Others Vs. Kaki and Others, , in Para 60 of the judgment observed:--

In judicial hierarchy finality is absolutely important because that gives certainty to the law. Even in the interest of litigants themselves it may not be unreasonable to draw a line in respect of the two different categories of litigation where procedure will say at a certain stage that questions of fact have been

decided by the lower Courts and the matter should be allowed to rest where it lies without any further appeal. This may be somewhat harsh to an individual litigant; but, in the larger interest of the administration of justice, this view is juristically sound and pragmatically wise.

In Para 67 of the judgment, the Court has observed thus:--

The rationale behind allowing a second appeal on a question of law is, that there ought to be some Tribunal having a jurisdiction that will enable it to maintain, and, where necessary, re-establish, uniformity throughout the State on important legal issues, so that within the area of the State, the law, in so far as it is not enacted law, should be laid down, or capable of being laid down, by one Court whose rulings will be binding on all Courts, Tribunals and authorities within the area over which it has jurisdiction. This is implicit in any legal system where the higher Courts have authority to make binding decisions on question of law.

In Para 68 and 69 of the judgment, the Court has observed thus:--

Even prior to amendment, the consistent position has been that the Courts should not interfere with the concurrent findings of facts. After 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering u/s 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was: (i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved; (ii) The substantial question of law to precisely state such question; (iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal; (iv) Another part of the Section is that the appeal shall be heard only on that question.

14. Since the plaintiff being a trespasser instituted the suit against the rightful owner of the suit land, the plaintiff cannot get the decree, as prayed for and also cannot get an order of injunction, as prayed for. The suit being decided by the Trial Court and the Appellate Court with concurrent finding of fact, I find no justification to arrive at a reverse finding on the issues framed in the suit and hence, the second appeal is dismissed with cost. Send down the L.C. record along with copy of the judgment.