
(2011) 12 GAU CK 0075

In the Gauhati High Court

Case No : Regular Second Appeal (Cri) No. 5 of 2010

Smt. Thanmawii

APPELLANT

Vs

Smt. Lalchhuangi and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31, Order 7 Rule 11
Limitation Act, 1963 — Article 59, 10, 11, 12, 13

Citation : (2012) 1 GLD 280

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : P.C. Prusty, for the Appellant; C. Lalrmzauva Mr. T.J. Lalnuntluanga and Mr. Aldrin Lallawmzuala, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

S.C. Das, J.—This civil second appeal was directed against judgment & order, dated 24.7.2009, passed by learned Additional District & Sessions Judge-1, Aizawl District, Aizawl in RFA No. 2/2007. In the said first appeal, the judgment & order, dated 6.12.2006, passed by the Court of Assistant to the Deputy Commissioner, Aizawl District, Aizawl in Civil Suit No. 1/2000, was set aside by the first appellate Court i.e. the learned Additional District & Sessions Judge-1, Aizawl District, Aizawl.

Being aggrieved by the judgment & order, dated 24.7.2009, passed by learned Additional District & Sessions Judge-1, in RFA No. 2/2007, the present second appeal is preferred by the appellant, who has been arrayed as defendant No. 7 in the original civil suit.

I have heard learned Counsel, Mr. P C Prusty, for the appellant. Also heard learned senior Advocate, Mr. C Lalrmzauva, assisted by learned Advocate, Mr. T.J. Lalnuntluanga, for the respondent No. 1 as well as learned Additional Advocate General, Mr. Aldrin Lallawmzuala, for the State-respondent Nos. 2 to 7.

2. The following substantial question of law was formulated for decision in this appeal:

Whether Suit No. 1/2000 is barred by the Law of Limitation.

3. Respondent No. 1, Lalchhuangi, as plaintiff, brought Civil Suit No. 1/2000 in the Court of Assistant to the Deputy Commissioner, Aizawl District, Aizawl, praying for following reliefs :

(i) For a decree in favour of the plaintiff and against the defendants declaring that the LSC No. 124/72 which was in the name of the late Ralzatawna S/o Chalruala(L) was illegally transferred in the name of Ramliana(L) S/o Ralzatawna (L) and as such the said transfer being illegal is null and void.

(ii) For restoration of the said LSC to the name of Ralzatauma S/o Chalruala(L) and subsequently to cause transfer of the said LSC in the name and in favour of the plaintiff by virtue of the Heirship Certificate No. 277/86 issued in favour of the plaintiff.

(iii) For a decree declaring that the plaintiff being the owner of the said land under LSC No. 124/72 is entitled to occupation and possession of the same to the exclusion of the defendant No. 7.

(iv) For a direction to the defendant No. 6 to release the LSC No. 124/72 which has been illegally mortgaged by late Ramliana for obtaining the said HUDCO loan with a further direction that if the defendant No. 6 is keen on releasing the said loan, he may do so from the defendant No. 7.

(v) For cost of the suit, and

(vi) For any other relief(s) as the Hon''ble Court may deem fit and proper.

4. Briefly stated, the case of the plaintiff is that her husband Ralzatwana was the rightful owner of the homestead land of LSC No. 124/1972. Ralzatawana died on 3.7.1986, leaving behind herself and other children including son Ramliana. Plaintiff along with Ramliana and his family used to reside in the house of LSC No. 124/1972. Ramliana used to work in a Government Department. Sometimes in the year 1993, Ramliana taken away the document of LSC No. 124/1972 from her on the pretext that it was required in connection with payment of tax etc. and she handed over it to him. Ramliana died on 17.12.1998, leaving behind the defendant No. 7 (present appellant) and a daughter, who were residing in the same house with the plaintiff. After the death of Ramliana the defendant No. 7 had drawn all service benefits of Ramliana. The specific case of the plaintiff, as stated in the plaint was that Ramliana, her deceased son, fraudulently transferred the land of LSC No. 124/1972 in his name, in the year 1993, by fabricating document that she has given consent but she had never given such consent. The plaintiff, therefore, prayed for cancellation of the name of Ramliana from LSC No. 124/1972.

Regarding cause of action and limitation, in Para-II of the plaint, the plaintiff

stated thus:

That the cause of action in this suit arose when the said LSC was illegally transferred in the name of Sh. Ramliana (L) S/o Ralzatauma in the year 1993 without the knowledge and consent of the plaintiff and the same was made known only in the year 1999 after coming across the order Dt. 22/6/1999 (Annexure-III) as a result, the cause of action continues to survive.

5. Defendant Nos. 1 to 6 submitted written statement denying the averments made in the plaint and pleaded that the suit was hopelessly barred by limitation and that the transfer of ownership of LSC No. 124/1972 was rightly made in the name of Ramliana, based on the documents submitted including that of the letter of consent given by plaintiff and in due official process and as such, there was nothing wrong in such transfer and that the suit should be dismissed.

6. Defendant No. 7 also contested the suit denying the averments made in the plaint inter alia stating that the suit was not maintainable and that it was barred by limitation, laches, delay, estoppels and acquiescence etc. It was further pleaded that the plaintiff at the instance of others, after the death of her son, Ramliana, with a view to oust her and her daughter, instituted the suit falsely alleging that she knew nothing about transfer of LSC No. 124/1972 whereas, it was done with her knowledge and she consented to it and allowed the deceased Ramliana along with his family to reside in that house and that Ramliana used to pay the taxes of that house being the owner and all those documents were produced and proved.

7. The learned trial Judge considering the pleadings of the parties framed following issues:

1. Whether the suit is maintainable in its present form and style.
2. Whether there is any cause of action for the suit.
3. whether the suit is barred by limitation, waiver and estoppel.
4. Whether, the court fee has been paid by the plaintiff as per law.
5. Whether the transfer of ownership of the suit land is legal and valid or not.
6. whether the plaintiff had allowed transfer of the said land under LSC No. 124/72 in favour of her son Ramliana.
7. Whether the Def. No. 7 is liable to repay the HUDCO loan obtained by her late husband amounting to Rs.1 lakh plus interest to the Def, No. 6.
8. Whether the Def. Nos. 5 & 6 had committed any lapse(s) by not making deductions from the service benefits of late Ramliana for the purpose of repayment of loan obtained by the deceased.
9. Whether the Def. No. 7 has any right to continue occupation of the suit land except with the permission of the plaintiff.

10. Whether the plaintiff is entitled to the relief claimed.

8. In course of hearing, the plaintiff examined herself as PW 1 and also examined two more witnesses namely, C Lalengmawia and Lalduhzuali respectively.

On behalf of defendant Nos. 1 to 6 one witness namely, Lalhmachhuana, who was working as ASO in the Revenue Department, at the relevant time of transfer of ownership, was examined.

Defendant No. 7 examined herself as DW.1 and also two more witnesses namely, Thangliani and Lalthuthungi respectively

9. The learned trial Judge decided the issue Nos. 1, 2 and 4 in favour of the plaintiff and issue Nos. 3, 5, 6, 7, 8, 9 and 10 against the plaintiff and dismissed the suit.

10. The point of limitation was in issue No. 3 and the issue though was decided against the plaintiff but regarding limitation the learned trial Judge discussed nothing and simply in one line observed that he found the suit not to be barred by limitation.

11. Observation made by learned trial Judge in Para-11 of the judgment is quoted thus:

Issue No. 3 Whether the suit is barred by limitation, waiver and estoppel. As regards the law of limitation, the plaintiff approached the Court in the year 2000 and the transfer was effected in the name of the deceased Ramliana in the year 1993 and I do not find the suit to be barred by limitation, however, the plaintiff's action in allowing the defendant No. 7 and her husband to stay in the suit land without paying the rent and also without collecting the rent from the tenants shows that she had waived her right over the suit property. Further, the fact that the plaintiff did not take any steps to pay the Land Revenue Tax and did not assert her right over the suit land makes me to believe that she is estopped by acquiescence to make any claim to the said property. From the evidence adduced by the parties it is crystal clear that the plaintiff stood by without making any objection when her son Ramliana dealt with the suit property inconsistent with the right of the plaintiff, hence the plaintiff has lost her right to fight for the said property. In this point I would like to place my reliance on the decision of the Honourable High Court of Gauhati in the case of Sailala Vs. Smt. Ngurtaiveli, and it runs thus "On the basis of the facts found by the Courts below, which was accepted, the Court has no hesitation in coming to the conclusion that the conduct of late T was such that he acquiesced in the ownership of R in the suit premises though various notorious acts were done in the suit premises between the plaintiff and the near relative of the Late R while T was alive. T remains stood by. In such a case, the doctrine of estoppel by acquiescence comes into play. The proper sense of the word "acquiescence" is that if a party having right stands by and sees another dealing with the property in manner inconsistent with that right and takes no objection while the act is in progress, he cannot afterwards

complain.

12. The learned Additional District Judge set aside the judgment & order, dated 6.12.2006, passed by the learned trial Judge, referring to certain parts of the depositions of the witnesses in the judgment. The trial Judge formulated 10 issues and recorded its finding on every issue. The first appellate Court i.e. the learned Additional District Judge, did not formulate any point for determination and did not record his finding, issue-wise and in a narrative manner arrived at a conclusion and set aside the judgment, passed by the learned trial Judge and thereby violated the provisions contained in Rule 31 of Order XLI of CPC. While the learned Additional District Judge recorded a reverse finding he was supposed to give his decision, issue wise, based on the evidence and materials on record. The judgment & order, dated 24.7.2009, passed by learned Additional District Judge, in RFA No. 2/2007, is liable to be set aside summarily without further discussion and, accordingly, it is set aside.

13. The substantial question of law, formulated in this appeal, is on limitation. Limitation is a question of jurisdiction. If, limitation goes, the right to claim the relief before a Court of law goes.

The plaintiff brought the suit praying for declaration that the transfer of ownership of LSC No. 124/1972 in the name of Ramliana, made 14.10.1993, was wrong and liable to be declared null and void. To bring the relief, as sought for, within the purview of limitation in Para-11 of the plaint (already reproduced herein above), the plaintiff stated that she came to know about the transfer, on 22.6.1999, when she received Annexure III i.e. an order, dated 22.6.1999, issued by the Director, Local Administration Department, Government of Mizoram, Aizawl. The Annexure-III has been exhibited and marked as Ext.3. It was an order issued in the name of Ramliana asking for refunding a loan taken by him mortgaging the land of LSC No. 124/1972. The plaintiff's specific plea is that from the date of receipt of that letter she came to know about the transfer of LSC No. 124/1972 in the name of her son Ramliana in place of her husband-Ralzatawana.

14. Article 59 of the Limitation Act, 1963 prescribes thus :

Description of suit, Period of limitation, Time from which period begins to run

59. To cancel or set aside an instrument or decree or for the rescission of a contract, three years, When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

15. Section 3 of the Limitation Act, 1963 prescribes thus :

(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence....

16. In the present case, admittedly, transfer of ownership of LSC No. 124/1972 was made on 14.10.1993, the suit was instituted in the year 2000 i.e. after the prescribed period of limitation. The case of the plaintiff was that she came to know about the transfer after receipt of Annexure-III (Ext.3) which was received by her, on 22.6.1999, but in her deposition the plaintiff stated nothing that she came to know about the transfer only on receipt of annexure-III, rather in her deposition at page 3, in the last paragraph, she stated that after the death of Ramliana on 17.12.1999 she came to know that he had fraudulently caused mutation and transferred ownership of LSC No. 124/1972 in his name.

In her re-examination she stated, at page 16 of her deposition, that Ramliana actually died on 17.12.1998 and that her statement that he died on 17.12.1999 was incorrect. The PWs. 1 who are the son and daughter of the plaintiff, i.e. brother and sister of the Ramliana, also stated that Ramliana died on 17.12.1998.

Be that as it may, the plaintiff's defendant assertion was that she had drawn the knowledge of transfer of ownership on receipt of Ext.3 (Annexure-III) i.e. the letter, dated 22.6.1999 but in her deposition she even did not refer about that statement. Her other witnesses also did not state anything about limitation. The point of limitation was not seriously discussed by the trial Court. The first appellate Court did not at all touch it.

17. Learned counsel, Mr. Prusty, in support of his contention, has referred in decision of the Apex Court in the case of Kamlesh Babu and Others Vs. Lajpat Rai Sharma and Others, wherein the Hon'ble Apex Court in paras 22 and 23 held thus:

22. Apart from Section 3(1) of the Limitation Act, or even Order VII, Rule 11(d) of the CPC casts a mandate upon the Court to reject a plaint where the suit appears from the statement in the plaint to be barred by any law, in this case by the law of limitation. Further, as far back as in 1943, the Privy Council in, Lachmi Sewak Sahu v. Ramrup Sahu held that a point of limitation is prima facie admissible even in the Court of last resort, although it had not been taken in the lower Courts.

23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However, we are not required to elaborate on the said proposition, inasmuch as in the instant case such a plea had been raised and decided by the trial Court but was not reversed by the first appellate Court or the High Court while reversing the decision of the trial Court on the issues framed in the suit. We, therefore, have no hesitation in setting aside the judgment and decree of the High Court and to remand the suit to the first appellate Court to decide the limited question as to whether the suit was barred by limitation as found by the trial Court. Needless to say, if the suit is found to be barred, the appeal is to be dismissed. If the suit is not found to be time-barred, the decision of the first appellate Court on the other issues shall not

be disturbed.

18. In the present case, the alleged transfer of ownership of the LSC was done on 14.10.1993. The plaintiff and her deceased son, Ramliana, with defendant No. 7 were, admittedly, residing in the same house. Ramliana died on 17.12.1998. The transfer of ownership was made, observing the official procedure which has been proved, based on the evidence of DW. Lalhmachhuana.

19. Learned Additional Advocate General has submitted that this suit was clearly time-barred and that the transfer of ownership was made observing the official formalities.

Learned Advocate, Mr. Prusty, has submitted that the suit was clearly time-barred and hence the plaintiff's suit was liable to be dismissed.

Learned senior Advocate, Mr. Lalramzauva, referring to the depositions of witnesses and defendant No. 7, has made a strenuous argument that the transfer of ownership was not within the knowledge of the plaintiff and that the consent letter was not given by the plaintiff.

20. In the second appeal I do not like to enter into the scrutiny of the oral evidence, adduced by the parties in the suit. Only referring to the averment made by the plaintiff in her plaint regarding limitation and cause of action and her evidence on record, I find that the plaintiff failed to prove that she came to about the transfer only on receipt of the order, dated 22.6.1999 (Ext.3) and, therefore, the suit was absolutely time barred in view of the provisions prescribed in Article 59 of the Limitation Act, 1963.

21. The appeal is accordingly, allowed.

22. Judgment and order, dated 24.7.2009, passed by the learned Additional District & Sessions Judge-1, in RFA No. 2/2007, is set aside.

23. Send back the LC records along with a copy of this judgment. A copy of this order may also be sent: to the learned Additional District & Sessions Judge-1, Aizawl District, Aizawl. Prepare appellate decree accordingly. Appeal allowed.