
(2019) 06 GAU CK 0026

In the Gauhati High Court

Case No : Regular Second Appeal No. 13 Of 2009

Subash Mazumder And Ors

APPELLANT

Vs

Phoenix Tea And Agricultural Farm P Ltd. And Ors

RESPONDENT

Date of Decision : 11-06-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100

Citation : (2019) 06 GAU CK 0026

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A.C. Sarma, G. Bharadwaj, T.C. Chutia

Final Decision : Dismissed

Judgement

1. This is a second appeal preferred against the judgment and decree dated 21.11.2008, passed in Title Appeal No. 20/2007 by the learned Civil Judge, Dibrugarh, by which, the judgment and decree dated 12.03.2007, passed by the learned Munsiff No. 2, Dibrugarh, has been upheld. The present appellants were the plaintiffs in the original suit, which was decreed against them. As indicated above, the appeal filed before the learned First Appellate Court had also gone against them pursuant to which, the present appeal has been filed.

2. I have heard Shri A. C. Sarma, learned Senior Counsel assisted by Shri G. Bharadwaj, learned counsel for the appellants. I have also heard Shri T. C. Chutia, learned counsel appearing on behalf of the sole respondent. The LCR which have been received have also been carefully examined.

3. The brief facts of the case can be narrated in a nutshell as follows.

4. The present respondent as plaintiff had instituted Title Suit No. 28/2000 against the original predecessor-in-interest of the present appellants as the sole defendant. However, during the pendency of the suit, the original defendant had died including one of the legal heirs and accordingly, the present appellants were substituted. The suit was for ejectment of the defendants and recovery of khas

possession. Facts projected by the plaintiff was that the predecessor in interest of the appellants, one Shri Satish Chandra Mazumdar, was employed by the plaintiff which was a Tea Company and as an incidence of his employment, he was given a quarter which was standing on a plot of land of the Tea Estate and the schedule was appended to the plaint. The quarter was allotted on the condition that at the time of ceasing to be an employee of the plaintiff, the defendant had to vacate and deliver the khas possession thereof. However, even after the original defendant had ceased to be in the employment of the plaintiff, he did not vacate the premises in question. The plaintiff projected that the land and house were required to accommodate some of the employees.

5. As notice to vacate was not responded to, the present suit was instituted. It has been averred in the plaint that the house was not let out to the original defendant and rather the same was allotted to him as an incidence of service.

6. The defendants had contested the suit by filing written statement. The principal defence was that the original defendant was never in employment with the plaintiff and the house in question was constructed by him after clearing certain jungles. The ownership of the plaintiff over the house in question was denied and accordingly it has prayed that there was no cause of action in the suit.

7. Both the parties had adduced witnesses and the learned Trial Court had framed the following issues -

"On the basis of pleadings of both the sides, the following issues were framed in the suit:-

i) In there any cause of action for the suit and has the plaintiff right to sue?

ii) In the suit barred by limitation and adverse possession?

iii) In the suit maintainable?

iv) Whether Satish Chandra, the predecessor-in-interest of the defendants or the defendants were employee/employees of the plaintiff and whether they were given the suit land and house as an incident to the employment and whether they ceased to be employees of the plaintiff.

v) Whether the defendants are liable to be evicted and the plaintiff entitled to the khas possession?

vi) Whether the plaintiff is entitled to get the compensation as claimed?

vii) To what reliefs, the parties are entitled."

8. As indicated above, the plaintiff had adduced the evidence through 3 (three) numbers of witnesses whereas the defendants examined 4 (four) numbers of witnesses. For the purpose of adjudication of the present dispute, the findings on the issue numbers 4 & 5 are required to be specially examined.

9. Regarding the issue No. 4, the learned Trial Court held that the house in

question was allotted to the predecessor-in-interest of the defendants as an incidence of his employment. It may be mentioned that P.W. 1, Shri Ishwar Prasad Agarwala, who is the Managing Director of the plaintiff, had deposed that the original defendant was serving as a Compounder in the Tea Garden and the house in question was allotted to him as an incidence of his employment. As regards failure to produce any record of such employment, the said witness had deposed that a major portion of the land including the Office of the Garden of the plaintiff were eroded and washed away in a massive flood and as such, no records were available. In view of such eventuality, the witness of P.W. 2, who is an Ex-President of a Gaon Panchayat, attains significance. The said P.W. 2 deposed that the house in question was provided to the original defendant by the plaintiff as he was working as a Compounder in the Garden. The said P.W. 2 had further deposed that he himself was treated by the original defendant. The aforesaid deposition was unrebutted. The same was also supported by the version of the P.W. 3, who had stated that the original defendant was employed as a Compounder and in connection thereto, the house in question was allotted to him. However, due to old age, this original defendant had discontinued his service and accordingly, the house in question was required to be vacated and possession thereof be handed over to the plaintiff. On the other hand, the defendants had adduced evidence through 4 (four) numbers of D.Ws who denied any employer-employee relationship of the original defendant with the plaintiff company. It was categorically stated that the land in question was full of jungles which the original defendant had cleared. The learned Trial Court after perusal of the materials on record had decreed the suit in favour of the plaintiff. As stated above, the learned First Appellate Court vide the impugned judgment and order had concurred with the findings of the learned Trial Court and affirmed the judgment and decree in favour of the plaintiff.

Therefore, that the present appeal has been preferred.

10. This Court while admitting appeal vide order dated 23.01.2009, had formulated the following substantial questions of law -

"1. Whether the learned lower appellate court erred in law in not discussing the law of adverse possession and limitation?

2. Whether the learned lower appellate court erred in law in holding the plaintiff/respondent's right over the land without any documents of title?

3. Whether the learned lower appellate court failed to discuss the applicability of ratio of judgment passed in RSA No. 168 of 1996 dated 30.05.2003?"

11. Before adventing to answer the substantial questions of law framed, it would be useful to keep in mind the general principles which are required to be followed while adjudicating a second appeal. This Court is conscious of the fact that concurrent findings of fact are normally not to be interfered with unless such findings are absolutely perverse or based on no materials, whatsoever. It is also laid down by various judicial pronouncements that the error, if any, in the

impugned judgments have to be of blatant nature for inviting the interference of a Second Appellate Court. Only because another view is plausible, this Court in exercise of powers under Section 100 of the C.P.C., will not substitute another possible view.

12. Keeping the above principles in mind, the substantial questions of law are proposed to be dealt with in the following manner. The point of adverse possession is a matter of fact, the foundation of which has to be made in the pleadings itself. In the instant case, the written statement of defendants does not contain a single averment regarding adverse possession. Even if the term "adverse possession" is not used, the ingredients of adverse possession have to be adequately pleaded which amongst others would include possessing the land of the adverse party in open assertion of rights for a stipulated time. In the instant case, though a statement has been made in the written statement that the house was constructed by the plaintiff by clearing jungles, it has not been stated that the land was occupied the plaintiff as if it was his own land. In paragraph 7 of the written statement, there is only a denial of the employer-employee relationship, but the same cannot be termed of laying in foundation for taking the defence of adverse possession. In that view of the matter, the first substantial questions of law is answered against the appellant.

13. The second question which require consideration is regarding the title of the land in absence of documents. The P.W. 1 has deposed that in a devastating flood, a major part of the Tea Garden as well as the Office was washed away which included all records. Therefore, in view of the fact of non-availability, the oral evidence of the rival parties have to be examined. In the plaint, a schedule has been given describing the house and the land including the Dag and Patta numbers. For ready reference, the relevant part of the schedule is quoted herein below -

"A thatched roofed house with Bamboo structures together with land measuring 2 Bighas 4 Kathas 7 lechas i.e. 1 Bigha 1 Katha 1 Lecha in dag No. 422 (part) and 1 Bigha 3 Kathas 6 lechas in Dag No. 438 covered by periodic patta No. 26 situated at Phoenix T.E. of Raidang village of Mouza-Bogdung."

14. The aforesaid statement has not been denied either in the written statement or in the evidence of the defendants. Though a feeble attempt was made at the argument stage to contend that the land in question is khas land, in absence of pleadings, such arguments cannot be entertained, that too in the second appeal stage. The question of documents may also be relevant to establish the employer-employee relationship. Admittedly, in the devastating flood, all the documents were washed away. However, the P.W. 2, who is an Ex-Gaon Panchayat President, had clearly deposed that the original defendant was in employment with the plaintiff as a Compounder and he himself had undergone treatment under the original defendant. In view of such unrebutted evidence, this Court is of the opinion that no error has been committed by the lower Appellate Court in upholding the plaintiffs right over the suit land.

15. The third question is the applicability of the ratio of a judgment dated 30.05.2003, passed in RSA 168/1996. The said question would be applicable only with the findings of the learned First Appellate Court as the judgment of this Court is subsequent to the judgment of the learned Trial Court. On perusal of the judgment of this Court, dated 30.05.2003, it appears that in the said RSA No. 168/1996, the present defendant was the appellant, who had approached this Court against the concurrent findings of fact. The facts would reveal that the appellant in that case could not prove its case by cogent evidence in the learned Trial Court and the findings have been upheld by the learned First Appellate Court and not interfered by this Court. Though the appellant in that case is the respondent in this appeal, that by itself would not be the sole factor to determine the applicability as each case has to be decided on the basis of its facts and circumstances. Therefore, no error can be attributed to the learned First Appellate Court on this ground.

16. In view of the aforesaid facts and circumstances and discussion, the substantial questions of law have been answered in the above manner and accordingly the appeal stands dismissed.

17. Registry to transmit back the records of the case to the learned Court below forthwith.