

(2019) 01 JH CK 0142
In the Jharkhand High Court
Case No : Second Appeal No. 154 Of 2008

Suresh Kumar Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:

Chota Nagpur Tenancy Act, 1908 — Section 84

Transfer Of Property Act, 1882 — Section 41

Code Of Civil Procedure, 1908 — Section 100, Order 41 Rule 31

Citation : (2019) 01 JH CK 0142

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Kundan Kr. Ambastha, Pratyush Kumar, Prashant Kr. Shrivastava

Final Decision : Dismissed

Judgement

1. Heard Mr. Kundan Kr. Ambastha, counsel appearing on behalf of the appellant.
2. Mr. Pratyush Kumar and Mr. Prashant Kr. Shrivastava, Advocate appear on behalf of the respondents.
3. Counsel for the appellant submits that the instant second appeal has been filed against the judgment and decree dated 22.05.2008 passed by Xth Additional Judicial Commissioner Ranchi, whereby Title Appeal No. 26 of 2004 filed by the plaintiff-appellant was dismissed and the judgment and decree dated 19.04.2004 passed by Sub-Judge VIth in Title Suit No. 81 of 1999 T.R. No. 126 of 2002 was affirmed.
4. He submits that plaintiff in Title Suit had prayed for declaration of right, title and interest as well as confirmation of possession or in the alternative, if it is found that the plaintiff has not been in possession of the suit property, for restoration of possession. A declaration was also sought that order dated 31.08.1998 passed by Deputy Commissioner, Ranchi in Case No. 1R8/96-97 is void, illegal and arbitrary. The prayer was made for restraining the defendants

permanently from disturbing the peaceful possession of the plaintiff over this property.

5. The case of the plaintiff was that the plaintiff had purchased the suit property, which is a portion of R.S. Plot No. 514, under C.S. Khata No. 67, through registered sale deed dated 02.01.1994 from Biltu Ali and his Co-sharers. The suit property was recorded in the name of Bhikhari Bhuia in Cadastral Survey Record of right published in the year 1910 and the vendors of the plaintiff are the recorded tenants.

6. Prior to purchase of the property by the plaintiff, the suit property, along with other lands, were subject matter of partition suit no. 185 of 1966 and it was found that in the partition suit, a pleader Commissioner was appointed, who submitted his report that the land, including the suit property, are in physical possession of the vendor of the plaintiff and on the basis of pleader Commissioner's report, a final decree was drawn in partition suit no. 185 of 1966 against which no appeal was preferred.

7. The Counsel further submits that State was also a party in the said Partition Suit No. 185 of 1966. Further, the plaintiffs came in possession of the property by virtue of registered sale deed dated 02.01.1994 and the State never filed any suit for declaration of the registered sale deed as null and void.

8. Following issues were framed by the learned trial court: -

- (i) Is the suit as framed maintainable?
- (ii) Has the plaintiff got any cause of action and right to sue?
- (iii) Is the suit is barred by law of limitation or adverse possession?
- (iv) Is the suit properly valued and Court-fee is paid sufficiently?
- (v) Has or had the plaintiff or his predecessor in interest valid right, title, interest and possession over the suit property or the suit property is government land?
- (vi) Is the order passed by the Deputy Commissioner, Ranchi cancelling the demand opened in the name of the plaintiff/his predecessor in interest in the State of Bihar is illegal, mala fide, arbitrary, discriminatory, void and without jurisdiction and whether the Deputy Commissioner, Ranchi has got such right to cancel demand/jamabandi?
- (vii) Is the plaintiff entitled to the relief as prayed for?
- (viii) Is the plaintiff entitled to any other relief or reliefs?
- (ix) Is the plaintiff protected u/s 41 of the Transfer of Property Act in case he fails to prove the title over the suit property?

9. While advancing his argument, counsel for the appellant submits that issue no. 5 was the central issue involved in this case and this issue has not been

properly decided by the learned courts below, in as much as, the aforesaid fact about Partition Suit No. 185 of 1966 has not been properly considered. He further submits that the lower appellate authority while deciding the appeal, has committed serious error of law, in as much as, the said authority did not frame any point for determination and has violated the provisions of Order 41, Rule 31 of the Code of Civil Procedure, 1908.

10. Counsel for the appellant submits that the appeal was filed against the trial court judgment which was numbered as Title Appeal No. 26 of 2004 and the lower appellate court dismissed the appeal by committing serious error of law in as much as the lower appellate court did not frame the point for determination.

11. After hearing the counsel for the appellant and after going through the judgment passed by the learned trial court as well as learned lower appellate court, this Court finds that the learned trial court recorded, inter alia, following findings regarding issue nos. 5 and 9: -

i. Even the Pleader Commissioner at the time of submitting this report on 07.06.74 not found the vendors of plaintiff in possession over the land of R.S. Plot No. 514, Khata No. 328 corresponding to C.S. Plot Nos. 665 and 666 under C.S. Khata No. 67, the person who was in possession of the land was the Government. Nowhere in that report, it has been mentioned that parties of Partition Suit No. 185 of 1966 were in possession of R.S. Plot No. 514 which is the suit property.

ii. In the final decree (Exhibit-7/a), it was found that Para 4 of the report of Pleader Commissioner clearly mentioned that without considering the present condition of the suit plots, the partition was allowed in two parts on the basis of C. S. Khatiyan and the schedule in the partition suit only referred to C. S. Khatiyan and nowhere in the schedule the R.S. Khatiyan and Plot numbers were mentioned.

iii. Even the Pleader Commissioner in the Partition Suit 185 of 1966 did not find the vendors of the plaintiff to be in possession of the suit land and this was due to the fact that the land corresponding to the C.S. Plot was recorded as Kaiser-a-Hind. Ultimately, the learned trial court held that the vendors of the plaintiff cannot claim right, title and interest over the suit property because the suit property has been recorded as Kaiser-a-Hind in Revisional Record of Right and the said entry made in the Revisional Record of Right was never challenged by the plaintiff or by his vendors and such entry made in the Revisional Record of Right. In view of the provisions of Section 84 of Chotanagpur Tenancy Act is presumed to be correct, until it is proved by evidence to be incorrect.

iv. Accordingly, the learned trial court held that the suit property is a Government land and plaintiff or his predecessors has no valid right, title, interest and possession over the suit property.

v. So far as Section 41 of the Transfer of Property Act is concerned, the learned

trial court held that the plaintiff had not purchased the land, after taking reasonable care to ascertain as to whether their vendors had power to make such transfer and accordingly, held that the plaintiff is not protected under Section 41 of the Transfer of Property Act.

vi. So far as the claim of adverse possession is concerned, the same was decided by the learned trial court vide issue no. 3 and the same was also rejected after considering the materials and evidences on record.

12. The learned lower appellate court, at Para 6 of its judgement has recorded as follows: -

"After hearing the parties, the main question arises before this Court for decision in the instant appeal, as to whether the impugned judgment and decree passed by the learned court below is sustainable in law and facts of the case or not."

13. This Court finds that although the learned lower appellate court has not specifically framed the point for determination, but each and every aspect of the matter was duly considered by the learned lower appellate court and the learned lower appellate court also recorded a finding after considering all the materials on record that even the Pleader Commissioner who had submitted a report in the partition suit of the year 1966 had not found the vendors of the plaintiff in possession of the suit land and the Partition Suit was decided. The R. S. plot number was not mentioned in the Partition Suit No. 185 of 1966 and ultimately, held that on the basis of Exhibits-6, 7 and 7/a, the plaintiff/appellant or his vendors cannot claim right, title and interest over the property because the property was recorded as Kaiser-a-Hind in the Revisional Record of Right and entry made in the Revisional Record of Right, was never challenged by the plaintiff/appellant or his vendors.

14. The appellate court also relied upon Section 84 of Chotanagpur Tenancy Act, which provides that every entry in the Revisional Record of Right so published, shall be evidence of the matter referred to such entry and shall be presumed to be correct, until it is proved by the evidence that it is to be incorrect. The plea of adverse possession as claimed by the appellant was also duly considered by the learned lower appellate court.

15. Upon perusal of the judgment, this Court finds that all issues were framed by trial court were duly considered and concurrent finding of facts have been returned by the learned lower appellate court. There is no scope for this Court at second appellate stage to reappraise the evidences adduced by the parties and come to a different finding. In the Judgment passed by the Hon'ble Supreme Court reported in 2006 AIR SCW 2606 and AIR 2014 SC (Supp) 1135 it has been held that concurrent finding of facts on the basis of evidence adduced by the parties cannot be re-appreciated and re-opened in second appeal. It has been in 2006 AIR SCW 2606 at paragraph nos. 26 and 27 as follows: -

"It is not within the domain of the High Court to investigate the grounds on

which the findings were arrived at, by the last court of fact. It is true that the lower appellate court should not ordinarily reject witness accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal, when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two interferences are possible. One drawn by the lower appellate court is binding on the High Court in Second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.

27. If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual matrix, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This court in *Reserved Bank of India v. Ramkrishna Govind Morey* (1976 (1) SCC 803) held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference."

16. In judgment passed by Hon'ble Supreme Court reported in (2006) 3 SCC 224 (*G. Amalorpavam and Others vs. R.C. Diocese of Madurai and Others*) and it has been held as follows: -

"The question whether in a particular case there has been substantial compliance with the provisions of Order 41, Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the higher appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court having

considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavor on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide the litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised, to avail the remedy of second appeal conferred by Section 100 CPC."

17. The judgment of the lower appellate court reflects its conscious application of mind and has recorded findings supported by reasons on the same issues which were framed by the learned trial court dealing with the contentions put forth and pressed by the parties for decision of the appellate court. All the issues involved in this case have been considered by the lower appellate court by appreciating all the evidences, facts and arguments of the parties including the issue no. 5 which has been argued by the counsel for the appellant before this court. Accordingly, this Court finds that there has been substantial compliance of the provisions of Order 41, Rule 31 of the Code of Civil Procedure in view of the ratio of the judgment reported in (2006) 3 SCC 224 (G. Amalorpavam and Others vs. R.C. Diocese of Madurai and Others) and thereby the justice has not suffered by not indicating the point of determination by the learned lower appellate court. It is not the case of the appellant that the appellant that the appellate judgement is cryptic or any of the relevant aspect of the matter has not been noticed. In view of this, the judgment which has been relied upon by the appellant reported in (2010) 13 SCC 530 (B.V. Nagesh and Anr. Vs. H.V. Sreenivasa Murthy) does not apply to the facts and circumstances of this case.

This is over and above the fact that the learned lower appellate court in its judgment had recorded that the main question which arises in the appeal, as to whether the impugned judgment and decree passed by the learned trial court is sustainable in law and facts of the case or not, which indicates that all the issues which were before the learned trial court were being considered by the learned lower appellate court. Upon perusal of the judgment, this Court finds that all the issues which were before the learned trial court were duly considered by the lower appellate court and concurrent finding of facts have been returned by the learned lower appellate court. There is no scope for this Court at second

appellate stage to reappreciate the evidences adduced by the parties and come to a different finding. Both the learned courts below have considered the aforesaid point raised by the appellant in this appeal and have come to concurrent findings which are against the appellant. This court is of the considered view that no question of law, much less any substantial question of law is involved in this case.

18. In view of the aforesaid facts and circumstances, there being no substantial question of law involved in this Second Appeal, which is accordingly dismissed.