

(2006) 03 GAU CK 0002

In the Gauhati High Court

Case No : Regular First Appeal No. 01 (AP) of 2004

Teshy Shelly

APPELLANT

Vs

Tayum Ete

RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Citation : (2006) GLT 796 Supp

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : B.L. Singh, for the Appellant; T. Son, for the Respondent

Judgement

H.N. Sarma, J.—This appeal is directed against the judgment and decree passed in Title Suit No. 24/2003 passed by the learned Additional District and Sessions Judge (FTC) Yupia on 20.4.2004 by which the suit of the Plaintiff was dismissed with cost.

2. The Plaintiff Appellant filed TS No. 5 of 2000 in the Court of the Deputy Commissioner, Papum Pare, Itanagar which was later on transferred for early disposal to the court of the learned Additional District and Sessions Judge (FTC) Yupia.

3. The pleaded case of the Plaintiff inter alia is that he is the owner in possession of an area 37 acres of land situated along Pare river near Tigdo ghat at Doimukh since the year 1954 and he in possession of the said land without any disturbance from anybody. While the Plaintiff was occupying the said land peacefully the Defendant Respondent sometime in the year 1985 requested the Plaintiff to permit him to use 3/4 puras of land on lease basis on the condition that the said plot of land shall be returned to the Plaintiff at any time as and when the Plaintiff requires. The Plaintiff being in need of plot of land in question which was so leased in favour of the Defendant Respondent, requested the Defendant on 21.4.2000 to return the same and although the Defendant agreed to return the said leased plot of land but later on refused. Being unable to

recover the same, the Plaintiff filed the present suit.

4. Summons being served, the Defendant Respondent appeared and submitted his written statement. In his written statement the Defendant denied the possession of 37 acres of land. In fact, according to the Defendant the Plaintiff has only 11 acres of land and not 37 acres as claimed. It is the case of the Defendant that on 31.5.85 the Defendant purchased the said plot of land by paying the sum of Rs. 7000/- and the copy of the purchase agreement is annexed as Annexure-B of the written statement. A plea of adverse possession over the land was also taken by the Defendant in his pleading. On such allegations the Defendant prays for dismissal of the suit with cost.

5. Upon pleadings the learned trial court framed the following issues:

- i. Whether the suit is maintainable in its present form?
- ii. Whether there is any cause of action of the suit?
- iii. Whether the land in question was sold to the Defendant by the Plaintiff?
- iv. Whether the Plaintiff is at present in physical occupation of the suit land?
- v. Whether the Defendant obtained the land in question on leasehold basis from the Plaintiff in the year 1985?
- vi. Whether the Defendant failed to pay the lease rent to the Plaintiff? vii. Whether the Defendant illegally holding possession of the suit land?
- viii. Whether the Plaintiff or the Defendant has title over the suit land?

During the course of trial Plaintiff examined as many as 10 witnesses including himself whereas, Defendant examined as many as 8 witnesses including the Defendant. On completion of the trial the learned trial court vide judgment and decree dated 20.4.2004 dismissed the suit with cost of Rs. 2250/-.

6. The learned trial court in passing the impugned judgment decided the issue No. 1 which relates to maintainability of suit against the Plaintiff, whereas the issue No. 2 has been decided the issue in favour of both the parties. Interestingly, the said issue No. 2 relates to the cause of action in the suit. The issue No. 3 was a vital issue that arose for decision of the Court and the learned trial court decided the same against the Plaintiff. On the basis of Issue No. 3, issue No. 4, 5, 6 and 7 were also decided against the Plaintiff. By deciding the issue No. 8, the learned trial court has held that the Plaintiff has no legal right to get decree in his favour, on the facts and circumstances of the case, decided the issue in favour of the Defendant.

7. I have heard Mr. B.L. Singh, learned Counsel appearing for the Appellant and Mr. T. Son, learned Counsel for the Defendant Respondent.

8. Challenging the impugned judgment and decree, it is submitted by Mr. B.L. Singh that the learned trial judge completely misdirected herself in passing the

impugned judgment and the learned trial court totally ignored the basic principles of law relating to disposal of a civil suit. In support of his aforesaid submission Mr. Singh has referred to the impugned judgment on issue No. 3 particularly to the finding at page "65" of the "Paper Book" wherein it is stated inter alia that the burden of proof which rests on the Plaintiff to adduce satisfactory evidence in support of obtaining decree in civil case and convictions in criminal case, it appears the Plaintiff either himself or through the witnesses adduced could prove the suit to the satisfaction of this Court.

In deciding a civil suit, it is preponderance of probability of the case of both the contesting parties that should be taken into consideration. The principle and test of strict liability i.e. proof beyond reasonable doubt is not required to be applied in deciding a civil suit. I fully agree with the submissions of Mr. B.L. Singh and hold that the learned trial judge failed to consider basic principles to be followed in deciding the suit and adopted a wrong test and fell into obvious error in deciding the suit.

9. It is further submitted by Mr. B. L. Singh that the learned trial court committed gross error in deciding the issues 2, 3, and 8 which goes against the pleadings of the parties.

10. Mr. T. Son, learned Counsel for the Defendant Respondent on the other hand submitted that on the basis of proved facts the learned trial court dismissed the suit and accordingly, the impugned judgment and decree needs no interference.

11. I will now deal with the findings arrived at by the learned trial court in deciding issues 2, 3 and 8.

12. Issue No. 2 "whether there is any cause of action of the suit". The word cause of action is nowhere defined in the Code of Civil Procedure. Cause of action is the bundle of facts which being alleged by the Plaintiff and if unrebutted, entitles the Plaintiff to a decree. The ultimate finding of the learned trial judge in this issue is that there is a cause of action for the suit which is correct on the basis of the pleadings of the parties.

Issue No. 3: "whether the land in question was sold to the Defendant by the Plaintiff"--In the plaint it is admitted by the Plaintiff that suit land was given to the Defendant on lease basis returnable as per the demand of the Plaintiff. The Defendant asserted that vide Annexure-B of his written statement the suit land was purchased by him. Interestingly, the said Annexure-B was not exhibited in the case through any witness. The Plaintiff, during his examination in chief has admitted the execution of an agreement on 31.5.85, which is exhibited as Exhibit-A. The terms of the said agreement, Exhibit-A" is identical with the document annexed as Annexure-B of the plaint but there are certain other writings in the Annexure-B of the written statement by which payment of Rs. 1000 on 31.5.85, Rs. 4000 on 10.10.85 and again Rs. 2000 on 24.5.86 was incorporated which is not in the original agreement exhibited as Exhibit A in the suit. It is admitted by the Defendant that such a deed was executed between the parties as is in

existence but the Defendant has not produced the copy of the said deed, rather he submitted a distorted document as Annexure-B which does not tally with the original document at Exhibit-A. As per the terms of the aforesaid agreement dated 31.5.85 it is seen that the same is an agreement of sale of suit land in favour of the Defendant for consideration of Rs. 7000/- and on the date of agreement, Rs. 1000/- was paid by the Defendant to the Plaintiff. It is made clear in the agreement that if the full consideration money is not paid, in that event the transaction would be treated as lease agreement on Adhi system. The Plaintiff has specifically denied the payment of balance amount of Rs. 6000/- by the Defendant. But the Defendant in his deposition has stated that he has paid the entire amount. What is lacking from the Defendant side is that the Defendant has not been able to prove that he paid the balance amount of consideration money amounting to Rs. 6000/- although the Defendant tried to make out such payment incorporating some payment of transaction in Annexure-B of the written statement. The said document at Annexure-B was not proved by the Defendant for the reasons best known to him.

13. From the above circumstance of the case it appears that the aforesaid document at Annexure-B is false, fabricated and prepared separately to which no evidence can be given. That apart the same was not admitted in the suit. The learned trial court discarded the case of the Plaintiff on flimsy ground alleging that the statement of witness given by the Plaintiff is an admixture of contradiction, hearsay, suspicion heaving no reasonable basis in any way. The Defendant admitted that there was an agreement between the parties on 31.5.85 and as per the agreement he paid the full consideration money to the Plaintiff. On that count it is the burden of the Defendant to prove that he has paid the balance sum of Rs. 6000/- in terms of the said agreement by leading clear, cogent and satisfactory acceptable evidence and the Defendant miserably failed to discharge the said burden. On failure to pay the balance consideration amount of Rs. 6000/- the transaction should be treated as leased on "Adhi" system as per the terms of the agreement and such intention of the parties is clearly spelt out in the agreement.

14. In interpreting such a document the basic rules for interpretation for consideration of such deed is to find the intention of the parties as held by the Apex Court in the case of Sarupuri Narayanamma and Others Vs. Kadiyala Venkatasubbaiah and Others, wherein the Apex Court observed inter alia that it is settled principle beyond doubt that each document has to be interpreted on the words of that document itself.

15. Again in the case reported in Ram Charan Das Vs. Girjanandini Devi and Others, the Apex Court held inter alia that where recitals are clear and the operative part is ambiguous, the recitals govern the construction. Normally a recital is evidence as against the parties to the instrument and those claiming under them in an action on recitals as an estoppel, though that would not be so on a collateral matter.

16. Applying the aforesaid principles of interpretation of document, I have no hesitation to hold that it was the intention of the parties in executing Exhibit "A", that in the event of nonpayment of the balance amount of consideration money of Rs. 6000/-, the transaction can be treated as lease on "Adhi" system. The learned trial Judge decided the issue No. 3 without considering these principles and accordingly I have no hesitation to set aside the said finding on issue No. 3 and accordingly, it is set aside.

17. Consequently, the decisions on issue No. 4, 5, 6 and 7 which were decided in favour of the Defendant on the basis of findings on issue No. 3 are also set aside.

18. Regarding issue No. 8, in deciding this issue the learned trial court again fell into obvious error that the Plaintiff failed to adduce supporting evidence to the conclusive proof that the Plaintiff has title over the disputed land about 3 puras situated by the side of River Dikrong at Doimukh. In fact, the title of the Plaintiff was admitted by the Defendant by virtue of execution of the deed of agreement dated 31.5.85. Had the Plaintiff not such title, and in that event there would have no occasion for the Defendant to execute the said deed in favour of the Plaintiff. The supporting evidence of the Plaintiff i.e. deed of will also goes to support the title in favour of the Plaintiff. Although the will was not probated, the title of the predecessor in interest of the Plaintiff has not been denied by the Defendant.

19. Accordingly, on such considerations I find that decision on Issue No. 8 is not legally and factually justified and hence the same is reversed.

20. In the result of this, the impugned judgment and decree passed by the learned trial judge stands set aside and the said matter is remanded back to the learned trial court to decide the issue No. 3, 5, 6 and 8 afresh on the basis of materials available on record. Both the parties are directed to appear before the learned Additional District & Sessions Judge, (FTC) Yupia on 25.4.2006 to receive further instruction relating to the matter. The learned Trial Court is directed to dispose the case as expeditiously as possible.

Registry is directed to send down the LCRs forthwith.

No costs.