
(1990) 07 GAU CK 0020

In the Gauhati High Court

Case No : Second Appeal No. 66 of 1982

Upendra Mandal

APPELLANT

Vs

Bhajahari Mandal & Ors.

RESPONDENT

Date of Decision : 31-07-1990

Acts Referred:

Transfer of Property Act, 1882 — Section 105, 105, 106, 106

Citation : (1991) 1 GLR 240

Hon'ble Judges : J.M.Srivastava, J

Bench : Single Bench

Advocate : C.C.Deka, J.N.Sarma, N.C.Phukan, N.Goswami, Advocates appearing for Parties

Judgement

1. This is defendant's appeal against the judgment and decree dated 25.3.82 passed by the learned Additional District Judge, Kamrup, Gauhati, whereby the defendant's appeal against the judgment and decree dated 19.5.77 passed by the learned Assistant District Judge No. 2, Gauhati was dismissed.

2. Briefly, the facts giving rise to this appeal, are that the plaintiff had filed the suit for ejectment of the defendant, the present appellant, from the property in suit, 17 Ls. of land in Rehabari, Guwahati. There were some houses on the land in suit the plaintiff's case was that he had purchased the said land from the defendants no. 3 and 4 for Rs. 7000/ by registered sale deed dated 25.4.67. The defendant no. 1, a licensee under the defendants no. 3 and 4, was in its permissive occupation. The defendant no. 1, had three houses on the land and holding was registered in his name in the municipal record. The defendant no. 1 was the soninlaw of the maternal uncle of the plaintiff and accordingly was allowed to continue in possession. The plaintiff subsequently had purchased the houses from the defendant no. 1, on 27.4.67. When the plaintiff applied to have his name mutated against the said holding in the. municipal record, the defendant no. 1, had raised objection. Hence the suit for declaration of title and recovery of possession of the property in suit was filed. The principal defendants,

hereafter referred as the defendants, who are the appellants, contested the suit and denied the sale of the holding for Rs. 800/ to the plaintiff no. 1. It was asserted that the land was agricultural land of which one Lal Bahadur Chetri was in occupation and that the defendants has taken transfer of the tenancy right of aforesaid Lal Bahadur Chetri and had tenancy right under the Assam (Temporarily Settled Districts) Tenancy Act, hereinafter referred as the "Act".

3. The learned trial court framed the necessary issues and held that the plaintiff was the owner of the land and the houses thereon, that the principal defendants were licensee and accordingly decreed the suit. The defendants' appeal was dismissed by the learned appellate court below in affirmation of the findings of the learned trial court.

4. Aggrieved, the defendants have come in appeal and Shri C. C. Deka, learned counsel appearing on their behalf, has submitted that proper issue in regard to licence as pleaded by the plaintiff, had not been framed, that the defendants appellants could not be evicted in view of the provisions of the Act. Sri Deka has also submitted that even, a licensee required to be served with notice to revoke the licence and that Ext. 3 the notice was not valid and proper.

5. Sri N. Goswami, learned counsel for the respondents has refuted the submissions.

6. The learned courts below in concurrent finding of fact have held that the plaintiff had the title to the land and the houses thereon having purchased by sale deed Ext. 2 the land from the proforma defendants 3 and 4 and also the houses thereon by sale deed Ext. 1 from the defendant no. 1, one of the present appellants. I have not found any reason at all to think that said finding of fact recorded by the learned courts below requires any reconsideration.

7. The learned trial court had framed a number of issues and while it may be said that no specific issues on licence as such had been framed, the question raised had been duly considered under issues 4, 5 and 6. Besides, the parties were well aware of each other's respective cases and in support of which they had adduced evidence. Hence, in my opinion, just because a specific issue on licence had not been framed, no prejudice had been caused to the defendants. Moreover, once it was held that the property in suit, i. e. the land and the houses thereon had been purchased by the plaintiff, it followed that the defendants appellants had no right over the land and the houses therein and accordingly no prejudice had been caused to the defendants appellants in the appreciation of their defence case.

8. The submission that even if the appellants were licensee the property, notice was required, it appears that the plaintiff had served notice Ext. 3 before the suit was filed by which the defendants appellant had been required to vacate the property in suit. However, no notice as such was required for termination of licence, for unless the terms of licence itself stipulates that it could be revoked or cancelled only by a notice, no notice is required to terminate licence.

9. Sri Deka, learned counsel for the appellant, had referred to Section 105 of the Transfer of Property Act, which deals with leave and in its connection to distinction between lease and licence. The above provision does not in any manner indicate that for termination of licence, otherwise than provided in the licence agreement itself, notice is required. "Licence" does not create interest in the property, it only permits one to occupy property of some other or to do something on the property of some other which otherwise, i.e. without permission or without licence would be unlawful. With such concept of licence, no notice to terminate licence is required. It was not the defendant's case that the licence under which he occupied the property, had any stipulation or term that it could not be revoked except by notice. Sri Deka, learned counsel for the appellant, has submitted that the plaintiff's case was that the defendant appellants were licensee and "assure" it was the plaintiff's burden to prove that the licence had been duly revoked by notice. The submission is not tenable in law. The plaintiff's case that the defendant appellant was licensee, has been found to be correct, but the defendant appellant had not pleaded that the licence under which he occupied the property there was stipulation or term that it could be revoked by a notice. I, therefore, repel the submission on behalf of the appellant.

10. In any case, Ext. 3 the notice had been served on the defendant no. 1 who was the person actually in occupation even though no notice was required to be served, to vacate the property which was as clear revocation of licence as the defendant appellant needed or deserved.

11. The next submission for the appellant was that their predecessor one Lal Bahadur Chetri was tenant since he had been in occupation of the land and appears to have grown vegetables on the land. It was an admitted fact that on 17 Ls. of land in dispute, the defendant no. 1 had three kacha houses and accordingly just because his predecessor had grown vegetables on the land, it could not be considered agricultural land and the occupant its tenant, under the Act. Admittedly the land was situated in Guwahati municipal limits and was recorded as holding no 116 in the municipal records. There is no merit in the defendant appellant's contention that the provisions of the Act were attracted to such land.

12. Sri Deka, learned counsel for the appellant has tried to raise some other pleas. This appeal was admitted only on two questions, which have been considered above. The further submissions are not entertained.

13. The appeal fails and is dismissed. No costs.