
(2014) 06 MEG CK 0019
In the Meghalaya High Court
Case No : CRP No. 28 of 2013

Venetta Kharsyntiew

APPELLANT

Vs

Tushar Nath Bhattacharjee

RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 53-A

Citation : (2015) 1 GLD 305 : (2014) 3 GLT 396

Hon'ble Judges : Prafulla C. Pant, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, C.J.—This revision filed under Rule 36-A of Administration of Justice and Police (in Khasi and Jaintia Hills) Rules, 1937, is directed against judgment and order dated 6-5-2013 passed by District Judge, Shillong in Regular First Appeal (RFA) No. 1 (T) of 2012 whereby said court has allowed the appeal, and judgment and decree dated 10-2-2012 passed by Munsiff/Assistant to Deputy Commissioner, East Khasi Hills, Shillong in TS No. 10 (T) of 2004 (new No. 10 (T)/2011), stood set aside.

2. Heard learned counsel for the parties and perused the lower court record.

3. Brief facts giving rise to this appeal are that (Late) Aghor Nath Bhattacharjee was predecessor-in-title (father of the three plaintiffs) had acquired on 13-4-1967 a plot of land measuring 19,585 sq. ft. numbered as plot No. 80 in patta (lease) No. 58 located in Lachumiere, Shillong, from the then Government of Assam (now Government of Meghalaya). He enjoyed said property (mentioned in Schedule-A) peacefully, till he, (Aghor Nath Bhattacharjee) died on 19-3-1984. It is pleaded in the plaint that after his death, the property devolved upon his heirs namely, Sabitri Bhattacharjee (Widow), Tushar Nath Bhattacharjee (Son,/ plaintiff No. 1), Binoy Nath Bhattacharjee (Son/since died), Smti. Sujata

Bezbaruah (Daughter/plaintiff No. 2) and Smti. Sabita Goswami (Daughter/plaintiff No. 3). Plaintiff No. 1, his mother and brother applied for mutation, and vide order dated 20-3-1991 passed by Extra Assistant Commissioner (Revenue), Shillong in mutation case No. 15 of 1991, their names were recorded. Smti. Sabitri Bhattacharjee, mother of the plaintiffs died in the year 1994 and Binoy Nath Bhattacharjee, brother of plaintiffs, who was bachelor died in the year 1998. The plaintiffs namely, Tushar Nath Bhattacharjee, and his sisters, Sujata Bezbaruah and Sabita Goswami instituted TS No. 10 (T) of 2004 on 7-4-2004 and it is pleaded by them that the defendant No. 1, namely Smti. Venetta Kharsyntiew and her husband, Shri SP Mahanta (defendant No. 2) got forged sale deed dated 28-11-1991 purported to have been executed by plaintiff No. 1, his brother, Binoy Nath Bhattacharjee and his mother, Sabitri Bhattacharjee, in respect of vacant piece of land measuring 5300 sq. ft. out of 19,585 sq. ft., left behind by (Late) Aghor Nath Bhattacharjee. It is further alleged in the plaint that the defendants later forcibly dispossessed the plaintiffs and their mother and brother from 5300 sq. ft. of the land, on which the plaintiffs filed TS No. 50 (T)/1992 against defendants in the court of Assistant to Deputy Commissioner, East Khasi Hills, Shillong for declaration of their right, title and recovery of possession. However, said suit was ultimately dismissed. According to the plaintiffs thereafter, plaintiff No. 1 (Tushar Nath Bhattacharjee) went to Sydney (Australia), and he and his two sisters appointed one TS Bareh (since died) as their Attorney on 1-12-1992, to look after their property in Shillong. It is alleged by the plaintiffs that the defendants after occupying 5300 sq. ft. under the garb of sale deed dated 28-11-1991 trespassed over the remaining 14,285 sq. ft. land mentioned in Schedule-B of the plaint. With these pleadings, plaintiffs sought declaration of the title over the suit property. They also sought restoration of possession of the property mentioned in Schedule-B, i.e. 14,285 sq. ft. out of 19,585 sq. ft. The plaintiffs further prayed for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs over the property mentioned in Schedule-B.

4. The defendants contested the suit and filed their written statement. In the written statement, the defendants in substance only admitted the ownership of (Late) Aghor Nath Bhattacharjee over the land in suit, and execution of the sale deed dated 28-11-1991 by the plaintiff No. 1, his mother and his brother. It is stated by the defendants that plaintiff No. 2 and plaintiff No. 3 (i.e. both daughters of Aghor Nath Bhattacharjee) have no concern whatsoever with the property in suit. As per the mutation order, it was only plaintiff No. 1, his mother and his brother whose names were recorded on the record, on death of (Late) Aghor Nath Bhattacharjee. It is further pleaded in the written statement that after 5300 sq. ft. land (mentioned in Schedule-A in the plaint) was purchased by the defendants from plaintiff No. 1, his mother and his brother vide sale deed dated 28-11-1991 for consideration price of Rs. 2,65,000/-, the possession of said land was handed over to them. It is admitted in the written statement that TS No. 50 (T) of 1992 filed by the plaintiff No. 1 was dismissed by Assistant to

Deputy Commissioner, East Khasi Hills, Shillong. As to the property shown in Schedule-B i.e. remaining 14,285 sq. ft. it is pleaded by the defendants that plaintiff No. 1, his mother (Sabitri Bhattacharjee) and his brother (Binoy Nath Bhattacharjee) executed an agreement dated 4-3-1992 for sale for an amount of Rs. 12,00,000/- out of which Rs. 2,00,000/- was paid as part of consideration mentioned in the agreement. It is also pleaded that on 04-04-1992, Rs. 1,00,000/- was further paid in pursuance to aforesaid agreement dated 4-3-1992 whereafter Rs. 30,000/- was also paid on 13-5-1992, and lastly sum of Rs. 1,00,000/- was paid on 26-5-1992 regarding which endorsements were made by the plaintiff No. 1, his mother and his brother in the money receipt dated 4-3-1992. It is stated in the written statement that aforesaid parties handed over possession of the land (mentioned in Schedule-B) to the defendants, and it is wrong to allege that they have trespassed over it. It is alleged in the written statement that the sale deed was to be executed in respect of land (mentioned in Schedule-B) by 14-5-1992, but plaintiff No. 1 made a request to extend the date till November 1992. According to the defendants on 18-6-1992, the plaintiffs sent a message to the defendants to come with the remaining amount of Rs. 7,70,000/- by 13-6-1992 for execution of the sale deed. The defendants, Smti. Venetta Kharsyntiew and her husband Shri SP Mahanta in pursuance to said message, went to Guwahati to the plaintiffs on 13-6-1992 with an amount of Rs. 7,70,000/- to make the payment of said sum, but plaintiff No. 2 unnecessarily intervened in the matter and started misbehaving with defendant No. 1. Plaintiff No. 1 and plaintiff No. 2 started demanding higher value for the land against the terms of the agreement. It is also alleged that Smti. Sujata Bezbaruah (plaintiff No. 2) got sent thereafter a notice dated 22-6-1992 through her counsel, Shri SR Sen, Advocate, on which a round of negotiation started in the chamber of said advocate and it was settled that sale deed would be executed within a period of ten days. However, later the plaintiffs backed out, though on the basis of the agreement of sale, Officer on Special Duty (Revenue) to the Government of Meghalaya, vide letter dated 14-4-1992 addressed to Deputy Commissioner, accorded sanction for transfer of the land in favour of defendant No. 1. The defendants have further pleaded in the written statement that it is the defendants who are making the payment of municipal dues, electricity bills etc in respect of land in suit.

5. On the basis of the pleadings of the parties, the trial court framed following issues:

- (i) Whether the defendants have forcibly taken possession of the suit property, or whether the plaintiffs acquired possession of the suit property in pursuance to the agreement of sale executed in their favour?
- (ii) Whether the suit is maintainable?
- (iii) Whether the suit is filed by limitation?
- (iv) Whether the plaintiff is entitled to the reliefs claimed?

6. The trial court after considering oral and documentary evidence on record, and hearing the parties, vide judgment and order dated 10-2-2012 dismissed the suit on the ground that the possession of the defendants is protected u/s 53-A of Transfer of Property Act, 1882. Aggrieved by said judgment and decree, Regular First Appeal (RFA) No. 1 (T) of 2012 was preferred by the plaintiffs before the District Judge, Shillong. Said court vide its impugned judgment and order dated 6-5-2013 allowed the appeal, hence this revision under Rule 36-A of Administration of Justice and Police (in Khasi and Jaintia Hills) Rules, 1937.

7. Admittedly, Aghor Nath Bhattacharjee had acquired land described in Schedule-A and Schedule-B of the plaint in the year 1967 which was allotted to him by the State Government. There is no dispute that Aghor Nath Bhattacharjee died on 19-3-1984. From the record, it is also established that Aghor Nath Bhattacharjee left behind his widow, Smti. Sabitri Bhattacharjee (since died), Tushar Nath Bhattacharjee (son/plaintiff No. 1), another son, Binoy Nath Bhattacharjee (since died), Sujata Bezbaruah (daughter/plaintiff No. 2) and Sabita Goswami (daughter/plaintiff No. 3). It is also established from the record that after death of (Late) Aghor Nath Bhattacharjee, names of only Sabitri Bhattacharjee (widow) and two sons namely, Tushar Nath Bhattacharjee and Binoy Nath Bhattacharjee were recorded in the mutation proceedings. It appears from Ext. A3 and Ext A6 that the two daughters of Aghor Nath Bhattacharjee who are the plaintiffs No. 2 and 3 in the suit had endorsed their no objection in the mutation application moved on behalf of widow and two sons of the deceased. However, that does not mean that they had not inherited the property of their father as co-sharer in the property. u/s 8 of the Hindu Succession Act read with Class I heirs mentioned in the schedule of the Act, all the five, i.e. widow, two sons and two daughters inherited the property left by (Late) Aghor Nath Bhattacharjee. It is not disputed that Sujata Bezbaruah (plaintiff No. 2) and Sabita Goswami (plaintiff No. 3) have not executed any agreement of sale in favour of the defendants in respect of their shares in the property mentioned in Schedule-B. As such, it cannot be said that the defendants have a right of possession over the land (mentioned in Schedule-B) in suit in respect of their shares.

8. As far as the share of plaintiff No. 1 is concerned, no doubt the defendants have taken the plea that an agreement of sale was executed on 4-3-1992 by Sabitri Bhattacharjee (widow of Aghor Nath Bhattacharjee/since died), Tushar Nath Bhattacharjee (plaintiff No. 1) and Binoy Nath Bhattacharjee (since died), for sale of land mentioned in Schedule-B for an amount of Rs. 12,00,000/-. Said agreement is admittedly an unregistered document. However, before Sub-section I-A was inserted in Section 17 of Registration Act, 1908, in the State of Meghalaya, it appears that it was not mandatory to register such documents. From the money receipts dated 4-3-1992 (Ext D) read with the copy of agreement of sale dated 4-3-1992 (Ext C), it appears that Smti. Sabitri Bhattacharjee (since died) and Binoy Nath Bhattacharjee (since died) did execute an agreement of sale in respect of their shares in the land measuring 14,285 sq.

ft. of plot No. 80 situated in Lachumiere (now their shares stand devolved on the present plaintiffs). It is also pertinent to mention here that learned counsel for the parties conceded that suit for Specific Performance of Contract, TS No. 27 (T) of 2004, renumbered as TS No. 154 (T) of 2012 has been instituted by the defendants for Specific Performance of Contract against the present plaintiffs, which is pending before the trial court.

9. However, as far as execution of said agreement of sale dated 4-3-1992 by plaintiff No. 1, Tushar Nath Bhattacharjee is concerned, though it purports to have been signed by said party, but DW-I, Venetta Kharsyntiew has herself admitted in her cross examination that the said plaintiff namely, Tushar Nath Bhattacharjee was in Australia on that date and she further told that she has no knowledge whether on the date of execution of Ext-C, if Tushar Nath Bhattacharjee had any knowledge or not of the documents. Learned counsel for the defendants argued that Tushar Nath Bhattacharjee, after he came to India signed said agreement. That means plaintiff No. 1, Tushar Nath Bhattacharjee did not sign the agreement of sale in the presence of witnesses as purports from said document (Ext C). This court is of the view that in the above circumstances, the present plaintiffs cannot be said to be bound by said agreement of sale except to the extent of the share they have inherited out of the share of their mother.

10. Learned counsel for the revisionists/defendants argued that they are entitled to protect the possession of land in Schedule-B on the basis of Principle of Part Performance of Contract incorporated in Section 53-A of Transfer of Property Act, 1882. However, this Court finds unable to accept the above argument for the reason that there is no specific plea of Part Performance of Contract in the written statement filed by the defendants in the present case. It should have been specifically pleaded to take benefit of Section 53-A of Transfer of Property Act, 1882 as to what some other Act has been done in furtherance of the contract. In absence of such plea in the written statement, no evidence could be led by the defendants nor can any benefit be given to them. Trial court had erred in law in dismissing the suit on said ground. It is settled principle of law that provision contained in Section 53-A of Transfer of Property Act, 1882 can be used only as a shield, not as a sword.

11. On behalf of the appellants/defendants, attention of this court is drawn to the case of Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, and Ramesh Chand Ardawatiya Vs. Anil Panjwani, and it is contended that defense of Section 53-A is available to the defendants even against the true owner.

12. However, having gone through said case laws, this Court is, of the view that unlike the cases relied on behalf of the revisionists, in the present case, plaintiff No. 2 and plaintiff No. 3 are not the signatories in the agreement of sale to execute the agreement in favour of the defendants. It is not the case of the revisionists (defendants) that they executed any agreement of sale in favour of

the defendants. As such, there is no application of doctrine of Part Performance as against them. This court has already discussed above that in view of Section 8 of Hindu Succession Act, 1956 read with the Schedule of the Act, the two daughters (plaintiff No. 2 and plaintiff No. 3) had equal shares with their mother and brothers. There was no power of attorney executed by them in favour of their mother or any one of the brothers to execute the agreement of sale on their behalf. As far as defence of doctrine of Part Performance as against plaintiff No. 1 is concerned, it has been discussed above that DW-1, Venetta Kharsyntiew herself made statement in her cross examination which reflects that when the agreement was executed, said plaintiff (No. 1) was not in India nor had he signed the agreement on that day. The agreement is unregistered as such and in the circumstances, it is difficult to say that he had agreed to sell his share to defendant No. 1. Once execution of agreement by the plaintiffs is not proved on the record, there is no question of attraction Section 53-A of Transfer of Property Act, 1882.

13. Also, on behalf of the defendants/revisionists, reliance was placed in the case of Narender Singh and Others Vs. Jai Bhagwan and Others, and it is submitted that the plaintiffs who inherited shares of their mother, Sabitri Bhattacharjee and their brother, Binay Nath Bhattacharjee cannot escape the liability of execution of sale deed in pursuance of the agreement executed by their mother and brother. Assuming that the mother and one of the brothers executed the agreement dated 4-3-1992, but the present plaintiffs" own their shares which they directly inherited on the death of their father, and in respect of those shares, it is not proved on the record that any agreement was executed by them, as such, this court is of the view that merely on the basis of Narendra Singh's case (Supra), the plaintiffs cannot be deprived of their title or possession.

14. Lastly, reference is made to the case of Alka Bose Vs. Parmatma Devi and Others, and it is submitted that even the oral agreement is valid and enforceable under the Contract Act, 1872. However, in the facts and circumstances of the present case, after the discussion of the evidence as above, since it cannot be said that in respect of the plaintiffs" share (which they directly inherited from their father) any agreement was entered between the parties, as such the above mentioned case in the opinion of this court, is of little help to the revisionists.

15. For the reasons as discussed above, this court is not inclined to interfere with the order passed by the Appellate Court. As such, the revision filed u/s 36-A of Administration of Justice and Police (in Khasi and Jaintia Hills) 1937, is hereby dismissed.