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Court : Mumbai Goa

Decided On : Apr-03-2014

Judge : S.B. Shukre

Appeal No. : Second Appeal No. 131 of 2005

Appellant : Manguesh Devasthan

Respondent : Krishna Gawade (Since Deceased) Through Legal Heirs and Others

Advocate for Pet/Ap. : Shri. I. Agha

Judgement :

Oral Judgment:

1. This appeal has been preferred against the judgment and decree dated 9.2.2004 passed by 3rd Additional District Judge, North Goa, Panaji, in Regular Civil Appeal No. 219/2003 thereby dismissing the appeal preferred against the judgment and decree dated 17.11.2003 passed in Regular Civil Suit No. 48/2003 by the Civil Judge, Junior Division, Ponda, dismissing the suit of the appellant.

2. The appellant had filed a suit against the respondents claiming reliefs that the appellant be declared as owner in possession of the suit property and that

Mamlatdar or appropriate authority be directed to correct the survey records by deleting the entry entered into the tenant's column showing husband of respondent no.1 to be the tenant of only paddy field forming part of the suit property bearing survey no. 24/3 of village Priol of Ponda Taluka.

3. It was the contention of the appellant that appellant was the owner in possession of the suit property since more than 100 years and when the appellant obtained survey records of the property bearing survey no. 23/3 for the purpose of development of Math premises it was discovered by it that the name of husband of respondent no.1 had been wrongly recorded in the tenant's column as tenant of the paddy field, which is part of survey no. 24/3. The appellant contended that respondent no.1 was never in possession of the said paddy field as tenant or otherwise and therefore, his name was required to be deleted from the tenant's column in the survey record.

4. Respondents filed their Written statement before the trial Court and admitted entire claim of the appellant. They submitted that the appellant was owner in possession of the suit property and that they had no right, title or interest in the suit property. They also submitted that name of husband of respondent no.1 was wrongly recorded as tenant of paddy field falling in the suit property.

5. Learned Civil Judge, however, dismissed the suit holding that no declaration of ownership could be granted in favour of the appellant as no title documents were produced on record by the appellant. It was also found by the learned Civil Judge that since the appellant was seeking to develop the property for non agricultural purpose, no declaration as regards ownership can be granted by the Civil Court. Appellant preferred an appeal before the Court of District Judge against the judgment and decree of the trial Court. Here also, learned District Judge did not show any favour to the appellant and chose to dismiss the appeal. He found that the observations of the trial Court relating to the development of suit property for the purpose of math were not correct although he found himself in agreement with the findings of the trial Court that appellant ought to have produced on record the title document. While dismissing the appeal, it appears that the only reason that weighed with the learned District Judge was that there was no cause of action

disclosed in the plaint as there has been no denial of title of the appellant and no declaratory relief as provided under Section 34 of the Specific Relief Act, 1963 (hereinafter called as the SRA, 1963 for short) could be granted.

6. This appeal came to be admitted by this Court on 27.10.2005 upon a substantial question of law and it is this substantial question of law which arises in this appeal for my consideration. The substantial question of law reads thus:-

Whether the Courts below failed to consider that as per the pleading of the parties, parties were not at issue and in precise terms of Order 14 Rule 1 C.P.C. and therefore, as per Order 15 Rule 1 of C.P.C. it was within the power of the Court to at once to pronounce the judgment and there was no room for the Courts below to dismiss the suit??

7. I have heard Shri I. Agha, learned counsel for the appellant who has taken me through the plaint, written statement, form I and XIV and also the impugned judgments and decrees to support his argument as to how the impugned judgments and decrees are inconsistent with well settled principles of law. None appears for the respondents although duly served.

8. It is seen from the plaint and the written statement filed in this case that the respondents have completely admitted the claim of the appellant. Respondents have stated in their Written statement that the appellant is the owner in possession of the suit property and that they have absolutely no right, title, interest of whatsoever nature to the suit property and that the name of husband of respondent no.1 has been erroneously shown as tenants of the paddy field in the survey record of property bearing survey no. 23/3 of village Priol.

9. So what is clear from the pleadings of the parties is that there was no issue involved in the case as contemplated under Rule 1 of Order 41 of the CPC, 1908. Rule 1 of Order 41 lays down that issue arises only when a material proposition of fact or law is affirmed by one party and denied by the other. In the instant case, the material propositions of fact put forward by the appellant have been admitted by the respondents and, therefore, no issue in terms of Rule 1 of Order 41, had arisen. The next question would be as to whether, in such a fact scenario, it would

have been appropriate for Courts below to have disposed of the suit at the first instance itself. This question would have to be answered by considering the provisions of Rule 1 of Order 15 of CPC. It reads thus:-

œParties not at issue:- Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.?

10. It is clear from the above provision that there is discretion conferred upon the Civil Court to pronounce a judgment at once at the first hearing itself when it is satisfied that parties are not at issue on any question of law or fact. But, it is to be noted that this is a discretion which has to be exercised by the trial Court in a reasonable manner by not only taking into account the fact that the parties are not at issue but also the surrounding facts and circumstances of the case. This is necessary because in a given case, even though the parties are not at issue, the plaint itself may not disclose any cause of action and even when it discloses the cause of action, the reliefs claimed in the plaint being of such a nature that they cannot be granted by the Court at once. Therefore, it would have to be seen as to whether there were any other circumstances in this case which warranted, in spite of admission of the claim of the appellant by the respondents, dismissal of the suit.

11. According to the trial Court, no title documents were produced on record of the case by the appellant and the document of the survey record as per the settled position of law is not a title document. There is no dispute about the settled position of law as stated by the trial Court, but, the question is whether on the basis of long standing possession as claimed by the appellant, the trial Court could have considered the grant of declaration as sought for by the appellant favorable or not.

12. In my opinion, the answer has to be given as in the affirmative for the reason that in the document of survey record itself, which is admittedly based upon the survey settled in the year 1972, the name of the appellant has been shown as owner in possession of the suit property and there is no denial of the fact that such possession of the appellant has been a long standing one. In the absence of any other document casting doubt upon entry in the survey record showing that it was

the property of the appellant, it was not proper on the part of the trial Court to come to the conclusion that only because the original title document was not produced on record, the appellant could not be held to be the owner in possession of the suit property.

13. It is equally well settled that whenever any person is found to be in settled possession of any immovable property continuously and without any obstruction for a long period of time, presumption of ownership would follow the possession. This, principle of law, in my view, was applicable to the facts established on record and the learned Civil Judge has committed an error in not applying the same to the fact of the instant case.

14. The First Appellate Court, as rightly submitted by the learned counsel for the appellant, has ignored the fact that declaratory relief as mentioned under Section 34 of the SRA, 1963 is only one of the species of the genus of declarations under the general law which encompasses within it several other declaratory reliefs.

15. In the case of VemareddiRamaraghava Reddy Vs Konduru Seshu Reddy, AIR 1967 SC 436, referred to me by the learned counsel for the appellant, the Hon'ble Apex Court has held that Section 42 of the SRA,(section 34 of the SRA, 1963) is not exhaustive of the cases in which declaratory decree may be made and Courts have power to grant such a decree independently of the requirements of this Section. Similar law is laid down by the Hon'ble Apex Court in the case of M/s Supreme General Films Exchange Ltd, Vs. Brijnath Singhji, AIR 1975 SC 1810, wherein the Hon'ble Apex Court held that Section 42 (Section 34 of SRA, 1963) merely gives a statutory recognition to a well recognised type of declaratory relief and subject it to a limitation. But, it cannot be deemed to exhaust every kind of declaratory relief. The relevant observations of the Hon'ble Apex Court appearing in paragraph 15 are reproduced thus:-

œThe result is that Section 42 merely gives statutory recognition to a well recognised type of declaratory relief and subject it to a limitation. But, it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside Section 42.?

16. In the instant case, respondents have not denied the title of the appellant to the suit property. But, the facts also showed that name of husband of respondent no.1 was recorded in the survey records in the tenant's column as tenant of only paddy field and this entry in my view, amounted to negation of absolute ownership of the appellant to the suit property and it was this fact which disclosed a cause of action in the instant suit. Therefore, it was proper for the appellant to have filed a suit seeking declaration of its ownership and possession and also mandatory injunction regarding deletion of the said entry. If the appellant had not filed such a suit, some complications may have arisen in future which would have had the potential of casting a cloud over absolute ownership of the appellant in respect of the suit property. The First Appellate Court went wrong in not considering this aspect of the case and erroneously found that plaint did not disclose any cause of action. In fact, this was a case in which, in the light of admitted facts, the suit could have been decreed by resorting to provisions of Rule 1, Order 15 of CPC. The findings recorded by the First Appellate Court being inconsistent with the settled principles of law must go.

17. In the result, I find that this was a case which was capable of being disposed of by the Trial Court by pronouncing the judgment at once in terms of Rule 1 Order 15 of CPC and since it was not done, both the impugned judgments and decrees could not be sustained in law. Substantial question of law is answered accordingly.

18. In the light of above discussion, I am of the view, the appeal deserves to be allowed. The appeal stands allowed and the impugned judgments and decrees are hereby quashed and set aside. Suit of the appellant is decreed in terms of prayer clause (a). In the circumstances of the case, parties to bear their own costs.

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