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Court : Guwahati

Decided On : May-19-2014

Judge : The Honourable Chief Justice Mr. Abhay Manohar Sapre

Appeal No. : RSA No. 203 of 2003

Appellant : Khirode Singha and Another

Respondent : Bikhalaria Devi and Others

Judgement :

This is a second appeal filed by the defendant under Section 100 of the Code of Civil Procedure Code against the judgment/decreed dated 12.3.2003 passed by Civil Judge (Sr. Division) Karimganj in Title Appeal No.19/1998 which in turn arise out of judgment/decreed dated 8.6.1998 passed by Civil Judge (Jr. Division) No.2, Karimganj in Title Suit No.119/94.

By impugned judgment/decreed, the first appellate court allowed the plaintiffs appeal and while setting aside the judgment/decreed passed by the trial court decreed the plaintiffs suit against the defendant in relation to the suit property.

So the question, which arises for consideration in this appeal, is whether first appellate court was justified in allowing plaintiffs appeal and in turn was justified in decreeing his suit against the defendant.

This second appeal was admitted for final hearing on following substantial question of law:

1. Whether the learned lower appellate court erred in law in declaring the title of the plaintiff over the suit land on the basis of Ext.2 which is a katcha patta, and the Ext. 4 a khuliyat, which does not convey any title whatsoever.
2. Whether the learned court below erred in law in declaring title of the plaintiff over the suit land on the basis of Kabuliyat executed by the plaintiff in favour of the King of Tripura although there is no iota of evidence to the effect that the suit land was ever a part of Tripura estate and that the same was covered by Article III of the Annexation Treaty dated 9.9.1949 whereby the estate of Tripura merged into the dominion of India.
3. Whether the impugned lower appellate judgment and decree of reversal are vitiated due to non-consideration of Ext. A, B and C

Facts of the case are short. They however need mention in brief herein below.

The appellant is the defendant whereas the respondent is the plaintiff.

The respondent (plaintiff) filed a suit against the appellant (defendant) out of which this second appeal arises for a declaration that he is the owner of the suit land measuring 7 Kedar 3 Poa 3 jasti covered by Khatian No.37 Dag No.197 and present patta No.16 Dag No.98 under Patharkandi P/S, Porgona Pratapghar Mouza Dhalia Hill 1st Block, for confirmation of his possession over the suit land and for injunction restraining the appellant from interfering in any manner in his possession over the suit land. The respondent claimed his title over the suit land on the strength of a registered document executed in his favour by Mirasdar kirit Bikram Deb Manikya Bahadur of Tripura called as kabuliyat no 3756 dt 31.12.1962 It was alleged that on acquiring the ownership rights, he also paid revenue rent to the State after acquisition of zamindari by the Govt, and had been paying revenue regularly for the land in suit. It was alleged that since defendant without having any right, title and interest in the suit land attempted to interfere in respondents peaceful possession and tried to assert his rights, and hence a cloud has been

cast on his title over the suit land to file a suit and seek a declaration of his ownership rights over the suit land.

The appellant denied the respondents right, title and interest on the suit land and set up a title in him through their predecessor. However, he did not file any document of title standing in the name of his predecessor or in his name. He also raised an objection that suit is not tenable for want of necessary party i.e state. Parties adduced evidence in support of their case. The respondent proved his title whereas the appellant only adduced oral evidence but failed to file any documentary evidence to prove his title.

The trial court dismissed the suit. The respondent (plaintiff) felt aggrieved of dismissal of his suit, filed first appeal out of which this second appeal arises. By impugned judgment/decree, the first appellate court allowed respondents (plaintiffs) appeal and while setting aside the judgment/decree of the trial court decreed the plaintiffs suit giving rise to filing of this second appeal by the defendant. As mentioned above, the second appeal was admitted for final hearing on aforementioned questions of law.

Having heard the learned counsel for the parties and on perusal of the record of the case, I am inclined to dismiss the appeal finding no fault in the impugned judgment/decree which rightly reversed the judgment/decree of the trial court and decreed the plaintiffs (respondents) suit against the defendant (appellant). It is apposite to reproduce the findings of the first appellate court on the material issue:

8. On perusal of discussion made in Issue No.5 by the court below it appears that he simply discarded the other materials on the ground that Ext.4 the Kabuliyat does not disclose patta or khatian or any dag no. as stated in the plaint but on perusal of Ext.4 it appears though there is no mention of patta or khatian no. but there is mention of talux No. as 1-80. It further reflects from Ext. 4 that there are specific boundaries given with are of land. Apart from Ext.2 is a patta issued in the name of plaintiff which disclosed khatian no.37 dag no.98. It further reflects from Ext.1(3), 1(4) revenue receipts the khatian No.37. Therefore, reading at together all these papers Ext.4, Ext. 2 and Ext. 1(3) and 1(4) it can be presumed that the land described in the plaint schedule virtually attracts the land of Ext. 4. Apart

from, though the defendants disputed the correctness of the description of the suit land but defendant did not disclose the correct description of the suit land. Besides, defendant No.1 as DW 1 stated that they have no claim over the land appertains to old Dag no.197, new dag no.98 of khatian No.37 and their claim restricted to dag No.48. Ext.2 katcha patta is marked under objection but there is nothing in record to discard Ext. 2 or to accept objection. It further reflects from the oral testimony of PW 1 that the boundaries stated by him exactly tallied with the boundaries given in the plaint. It also reflects from the evidence on record that on the north of the suit land there is one Ison Mian/Iskondar Ali who came in place of Indrajit Singh and land of defendant falls in the north of said Ison Miah.

9. On the other hand, though the defendants are claiming they are in possession of the suit land since the time of their predecessor but in support of their title they failed to produce any scrap of paper. Exts.A,B and C are the papers not related to right, title of any land. More failure of a criminal case of the plaintiff does not confer any right to the defendants over the suit land and criminal court has no power to decide right, title or declare possession in favour of either party. Therefore, no preponderance of material on record it appears that balance has been tilted in favour of the plaintiff.

Therefore, considering Ext.4 along with Ext.1 series and 2, we may safely hold that plaintiff well succeeded to prove his right, title and interest and possession over the suit land. Therefore, it appears from the record that the court below did not enter into the deep of the case in reference to the title of the suit land. It is settled principle of law that possession follows title. Therefore, in view of my above discussion I am constrained to hold that the learned Court below was wrong in his decision and his finding is tainted with illegality, which requires to be interfered. However, though the plaintiff claimed that he has 7 Kedars 3 poas 3 jastis land by the strength of Ext. 4 Kabuliyat but factually it is proved vide Ext.2 the Katcha patta that an area of 3 kedars 3 poas 3 jastis, that is, 108 decimals are recorded in the name of the plaintiff. Plaintiff though stated that in Ext. 2, the total area of Ext.4 not assessed or recorded but plaintiff failed to disclose in his evidence or otherwise where the balance operation of the land curbed out. So, on the failure of plaintiff to give any clue of the balance area this court not in a position to give any decree for

the land allegedly curbed out from Ext.4 being a court of law we are bound to accept the land record vide Ext.2 Court cannot travel beyond this.

10. Therefore, considering the evidence on record I find the plaintiff is entitled to get a decree for 3 kedars 3 poas 3 jastis land vide Ext.2.

In my considered view, here is a case where respondent (plaintiff) proved his title on the strength of registered document duly executed in his favour in relation to the suit land. On the other hand, the appellant (defendant) though attempted to assert his right, title and interest over the suit land but could not substantiate his ownership for want of any documentary evidence.

A title or/and ownership rights to the immovable property can be acquired and proved only through registered instrument but not on the strength of oral evidence. The respondent was able to prove his ownership rights on the strength of registered Kabuliyat duly executed in his favour whereas, the appellant was not able to prove his title. It was thus a case where respondent (plaintiff) had a better title over the suit land as compared to appellant (defendant) who though tried to set up a title in him but could not prove it. I would certainly prefer to place more reliance on the respondents (plaintiffs) evidence in preference to that of the appellant (defendant) on the issue of ownership rights of both over the suit land as was done by the First Appellate Court and indeed rightly.

In the light of foregoing discussion, I find no good ground to take a different view than the one taken by the first appellate court and while reversing the view of the trial court which is based on proper appreciation of evidence and being just and proper deserves to be upheld. It is apart from the fact that impugned finding of First Appellate Court being a finding of fact is binding on the second appellate court.

It is in my view a finding which is capable of being recorded on the evidence adduced and is neither against evidence on record nor against pleadings nor is perverse to such an extent that no judicial man with average capacity can ever record.

It is for all these reasons, I find no merit in this appeal, which fails and is accordingly dismissed. No cost.

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