

Ramen Bora Vs. Brajen Bora

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Court : Guwahati

Decided On : Jun-17-2015

Judge : A.K. Goswami

Appeal No. : RSA No. 67 of 2004

Appellant : Ramen Bora

Respondent : Brajen Bora

Advocate for Pet/Ap. : Mr. H.K. Baishya

Judgement :

1. Heard Mr. H.K. Baishya, learned counsel for the appellant. Also heard Mr. B. Banerjee, learned Senior Counsel assisted by Mr. K. Bhattacharjee for the respondents.

2. This appeal is preferred by the defendant against the judgment and decree dated 11.12.2003 passed by the learned Additional District Judge, Jorhat in Title Appeal No.37/2002 dismissing the appeal preferred against the judgment and decree dated 27.09.2002 passed by the learned Civil Judge (Jr. Divn.) No.2, Jorhat in Title Suit No.1/2001, decreeing the suit of the plaintiff.

3. This appeal was admitted to be heard by an order passed on 20.05.2004 on the following substantial questions of law:-

1. Whether the appeal is admitted under Section 58 of the Indian Evidence Act?
2. Whether the learned lower Court was right in following Section 23 and Section 11 and 12 of the Contract Act ?
3. Whether a decree passed by the learned Court below is right under Section 31(1) of the Specific Relief Act when the plaintiff did not exhibit the original sale deed Exhibit-Ka?
4. Learned counsel for the parties submit that apparently there is mistake in the substantial question of law No.1 as formulated by this Court and the same should be read as whether facts admitted need to be proved under Section 58 of the Indian Evidence Act ?
5. The plaintiff and the defendant are cousins. Their respective fathers are brothers. Plaintiff filed the suit for declaration of right, title and interest and for recovery of khas possession.
6. The case set out in the plaint is that the plaintiff had purchased 7 lechas of land measuring 3 katha 2 lechas covered by Dag No.1371 of P.P. No.148 of Bohotiagaon, Jorhat from the defendant by way of registered sale deed dated 13.07.1978 and was delivered possession. Plaintiff being in employment of the Government of Assam, was transferred to Merapani and accordingly, left for Merapani along with his family requesting the defendant to look after the land which was purchased from him. In the year 1996, on the request of the defendant, plaintiff permitted him to set up a Ghumti (Pan Shop) with the condition that he will vacate the same as and when required by the plaintiff. Coming to know that the defendant is preparing to construct a house without his permission, the plaintiff filed the suit.
7. The defendant in the written statement took a plea that he had become mad during the period from March, 1978 to November, 1978 and taking the advantage of his madness, he was carried to Jorhat Sub-Registrar Office where his signature was forcefully taken on a vague sale deed as mentioned in para 2 of the plaint. No payment was also made towards consideration amount. The plea taken by the

plaintiff that he was requested to look after the property, was also denied.

8. The trial court framed a number of issues, amongst which, Issue Nos.3,4,5 and 7 are relevant, and they are reproduced hereinbelow:-

3. Whether the plaintiff had purchased the suit land vide registered sale deed No.3375 dated 13-7-1978 ?

4. Whether the defendant was mad at the time of execution of the sale deed No.3375 dated 13-7-78 ?

5. Whether the sale deed No.3375 dated 13-7-78 is void ?

7. Whether the plaintiff is having right, title and interest over the suit land?

9. Plaintiff examined 3 witnesses and the defendant examined 5 witnesses.

10. Mr. H.K. Baishya, learned counsel for the appellant submits that when PW-3 had admitted that the defendant was a person of unsound mind, the learned courts below committed grave error of law in holding that defendant failed to prove his plea of being of unsound mind. Therefore, according to him, facts admitted were not required to be proved in terms of Section 58 of the Evidence Act. In view of the above, the defendant was not competent to contract under Sections 11 and 12 of the Indian Contract Act, 1872. He has further submitted that the plaintiff did not prove the alleged sale deed in accordance with law by not producing the original and therefore, the impugned judgments of the learned courts below are liable to be interfered with.

11. Mr. Banerjee, learned Senior Counsel for the respondent submits that Section 58 of the Evidence Act is not attracted in the facts and circumstances of the case and that in his evidence, PW-3 never stated that the defendant No.1 was of unsound mind. The original sale deed was gutted in a fire when houses were burnt in the year 1980 during a border dispute between Assam and Nagaland. It is submitted that PW-2 brought the original Register from the office of the Sub-Registrar and had proved the certified copy of the sale deed. He has also submitted that it is not a case where the defendant had denied his signature but

had set up a plea of the sale deed being void on the ground of lunacy. Both the courts having held that the defendant did not suffer from unsound mind, this court may not interfere with such finding of fact when there is no perversity in the same.

12. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

13. Section 58 of the Evidence Act provides that no fact need be proved in any proceeding which the parties agree to or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. The proviso to Section 58 provides that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions. The submission of Mr. Baishya is that there was admission of lunacy by the PW-3 in his evidence. A witness is not a party to the proceedings and therefore, Section 58 is clearly not attracted in the instant case. In a given case, if there is any evidence of the witness of the plaintiff in support of the case of the defendant with regard to a particular plea, what would be its effect, of course, would have to be considered by the court while reaching its conclusions.

14. A perusal of the evidence of PW-3 totally belies the contention of Mr. Baishya that he had supported the plea of lunacy set up by the defendant. Far from it, what was stated by PW-3 is that when he had come along with the plaintiff and defendant to the office of the Sub-Registrar for the purpose of registration of the sale deed, defendant was hale and hearty. PW-3 is a resident of the same locality, in which the plaintiff and the defendant are residents and he had deposed that he had never heard that the defendant was a lunatic and the defendant had also never spoken to him with regard to such condition though they had known each other for long. He had also deposed that he was present at the time of delivery of possession. Therefore, contention of Mr. Baishya with regard to the first substantial question of law has no force and the question is answered accordingly.

15. Both the courts below, as noted earlier, had recorded the finding that defendant failed to prove that he was of unsound mind at the relevant point of time or at any point of time. In the written statement, plea was taken that the defendant

was suffering from madness from the month of March, 1978 to November, 1978. The witnesses examined by the defendant, namely, DWs-1,3 and 4 are relatives of the defendant and DW-5 is the wife and the learned courts below had held that they all sang in different tunes in respect of unsoundness of mind of the defendant. No medical treatment was ever taken by the defendant and this factor was also given weightage by the learned courts below. The defendant tried to establish his lunacy by stating that he was treated by a Bez , who was examined as DW-2. It is relevant to note that DW-2 stated that the defendant was suffering from mental illness from 1978 to 1989. DW-2 did not have any licence to practice medicine. Evidence shows that defendant is blessed with 4 children and 3 of them were born in the Jorhat Civil Hospital at Jorhat, which is barely 5 km. away from their residence. Thus, the medical facilities were very much available at hand. On the basis of the materials on record, this court is of the considered opinion that the learned courts below rightly concluded that the defendant had failed to prove the plea taken by him that he was of unsound mind at the time when the deed was executed. In view of the above, the defendant was competent to contract and accordingly, substantial question of law No.2 is also answered against the appellant.

16. I find force in the submission of Mr. Banerjee that execution of the deed as such was not disputed but the same was sought to be nullified on the ground of the executant being of unsound mind. A clear admission to that effect, however, is not made in the written statement. The learned lower Appellate Court recorded that the plaintiff duly laid the grounds for proving the sale deed by way of secondary evidence. PW-2 corroborated the evidence of PW-1 relating to execution of the sale deed by the defendant by producing the original record. In view of above, substantial question of law No.3 is also answered against the appellant.

17. In the result, I find no merit in this appeal and accordingly, the same is dismissed. No costs.

18. Registry will send back the records.