

Rakhal Mandal Vs. Topa Baruah and ors.

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Court : Guwahati

Decided On : Sep-22-2003

Judge : I.A. Ansari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : Civil Revision No. 380 of 1998

Appellant : Rakhal Mandal

Respondent : Topa Baruah and ors.

Advocate for Def. : B.L. Das, C.K. Baruah and S. Saikia, Advs.

Advocate for Pet/Ap. : B.K. Ghose, M.H. Choudhury and L.N. Choudhury, Advs.

Disposition : Revision petition dismissed

Judgement :

I.A. Ansari, J.

1. This revision has arisen out of the judgment and order, dated 29.8.1998, passed by the learned Civil Judge (Senior Division) No. 1, Mongaldoi, in Title Suit No. 9/97 dismissing the suit.

2. I have perused the impugned judgment and order and also the materials on record. I have heard Mr. M.H. Choudhury, learned counsel for the plaintiff-

petitioner, and Mr. B.C. Das, learned counsel for the defendants-opposite parties.

3. The plaintiff-petitioner instituted Title Suit No. 9/1997 aforementioned, his case being, in brief, thus. The plaintiff is the owner of 13 Bighas of land by way of purchase vide two registered sale deeds and has been in possession thereof for the last more than 24/25 years. The defendants dispossessed the plaintiff, on 9.2.1997, by force from a portion of the said purchased land of the plaintiff, the land from which the plaintiff was so disposed being the suit land, described in the schedule to the plaint. On the basis of these pleadings, the plaintiff sought for recovery of the possession of the suit land in terms of Section 6 of the Specific Relief Act.

4. The defendants-opposite party contested the suit, their case being, briefly stated, thus : The Defendants, Puspa Ram Baruah, had purchased the entire land of 13 bighas aforementioned by a registered sale deed from the owner thereof and took possession thereof way back in 1999 and has been in possession thereof since then. The plaintiff was never in possession of the suit land, which forms part of the 13 bighas aforementioned.

5. On the basis of the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether there is cause of action for the suit ?
2. Whether the plaintiff purchased the suit land by registered sale deed as alleged in the plaint ?
3. Whether the plaintiff is on possession of suit land before six months of filing the present suit ?
4. Whether plaintiff is entitled for a decree as prayed for ?
5. To what relief/reliefs parties are entitled to ?
6. Both parties adduced evidence on record by examining their witnesses. Learned trial Court decided the issue Nos. 2 and 3 against the plaintiff and on the basis of these findings, the suit of the plaintiff was dismissed. Feeling aggrieved,

the plaintiff has, now, approached this Court.

7. Before entering into the merit of this revision, it needs to be pointed out that while exercising revisional powers under Section 115 of the CPC, the revisional Court will not interfere with any finding of fact unless such a finding is arrived at without any evidence or wholly against the weight of the evidence on record or by misreading the evidence on record or by wrong application of law. If on the basis of the evidence on record, two views are reasonably possible, the revisional Court will not substitute its own views in place of the view of the trial Court.

8. In the case at hand, the plaintiff's own case was that the suit land formed a part of the 13 bighas of land, which the plaintiff had purchased with the help of two registered sale deeds, and that the defendants dispossessed the plaintiff from the suit land on 9.2.1997. Belying and demolishing his own case, the plaintiff's own evidence is that the said land is outside the 13 bighas of the land purchased by the plaintiff. This apart, the plaintiff could not prove in his evidence as to when and how he was dispossessed from the suit land. His mere assertion was that the defendants had repossessed the land. Implicit in the assertion/ accusation was a tacit admission of the plaintiff that the defendants had been, at some point of time, in possession of the suit land and that they have, now, taken back the possession of the suit land. When and how the defendants happened to be out of possession was not explained by the plaintiff nor is there any explanation discernible, in this regard, from the evidence on record. Moreover, when and how plaintiff came to be out of the possession of the suit land was also not explained by the plaintiff in his evidence nor is there any explanation available from the evidence on record.

9. Coupled with the above, the plaintiff could not produce any sale deed to support his case that he, had come into the possession of the suit land by virtue of purchase thereof. As against this, the defendants were able to adduce evidence to show that the defendant, Puspa Ram Borah, had purchased the land by a sale deed (Exhibit 'ka') and came into possession of the suit land and has been in possession thereof, notwithstanding the contrary claim made over the land by the plaintiff.

10. On a close scrutiny of the discussion held by the learned trial Court in respect of issue No. 3, I do not find that the learned trial Court has erred in pointed out that the plaintiff could not prove his possession over the suit land. The finding, so reached by the learned trial Court, cannot, in my firm view, be said to be perverse.

11. Situated thus, I see no reasons to interfere with the finding of the learned trial Court on issue No. 3. If this issue is not interfered with, it logically follows that the suit of the plaintiff is bound to be dismissed and that is precisely what the learned trial Court has done. Viewed from this angle, I see no merit in this revision.

12. In the result and for the reasons discussed above, this revision petition is dismissed as being wholly without merit. However, there is no order as to costs.

13. Send back the LCR with a copy of the judgment and order.

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