

GAHC010006412009



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RSA/166/2009

HIRALAL KALANDI
S/O LATE UDAI KALANDI, PURANA LINE, KAKOJAN, T.E. , P.O.
NAKACHARI, DIST. JORHAT, ASSAM.

VERSUS

TATA TEA LIMITED and ANR.
WITH ITS REGISTERED OFFICE AT 1 BISHOP LEFROY ROAD.

2:MANAGER/DEPUTY GENERAL MANAGER

KAKAJAN TEA ESTATE
P.O. NAKACHARI
DIST. JORHAT
ASSAM

Advocate for the Petitioner : MR.D C MAHANTA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 11-12-2023

Heard Mr. TJ Mahanta, learned senior counsel assisted by Ms. P. Bhattacharjee, learned counsel for the appellant.

2. This appeal under section 100 CPC is directed against the first appellate judgment and decree dated 16.07.2009 passed in TA 18/2009 by the learned Civil Judge, Jorhat, thereby dismissing the appeal and affirming the judgment and decree dated 30.04.2009 passed by the learned Munsiff no.1, Jorhat in TS no.21/2005.

3. This appeal was admitted for hearing by order dated 27.11.2009 thereby formatting the following four substantial questions of law:

- (i) *Whether the learned Courts below have committed an error of law in deciding that no oral lease can be made under Section 107 of the Transfer of Property Act, 1882?*
- (ii) *Whether the learned Courts below have committed an error of law apparent on the face of the record that the question of determination of a lease under Section 106 of the Transfer of Property Act, 1882 was not necessary in deciding issue nos.3 and 8?*
- (iii) *Whether there was a valid lease executed in favour of the defendant by the plaintiffs by an oral agreement and whether the said oral lease was legally terminated?*
- (iv) *Whether the learned Courts below misconstrued the provision of section 106 of the Transfer of Property Act, 1882 in deciding the issue nos.3 and 8 relating to a lease based on oral agreement and by holding the defendant to be a mere licensee?*

4. The respondents are the plaintiffs in TS no.21/2005. In brief, the case of the respondents-plaintiffs in the plaint was that the respondent no.1 is the owner of Kakajan Tea Estate in the district of Jorhat and the day-to-day

managing of the Tea Estate is looked after by the respondent no.2 who is an employee of the respondent no.1. As an incidence of employment, the appellant was given a quarter on a piece of land. He requested for allotment of 100 sq. feet land to enable him to open a temporary tea stall on the said land and accordingly the appellant was allowed to occupy 100 sq feet of land from out of Dag no.407 of Patta no.1 (RDM) of Grant no.160 of Hulungapara Mouza under Teok Revenue Circle, Jorhat w.e.f. 01.04.1991, at the annual fees/ charge of Rs.11/- (Rupees eleven only). It is projected in the plaint that the appellant was allowed to construct a temporary shed for running a tea stall with condition to vacate the same whenever they require him to do so. It is alleged that the appellant, without permission from the respondents had occupied a large area of land and constructed a RCC house on about 1080 sq. feet of land within a larger area of illegally occupied land. Accordingly, as the occupation of the Tea Estate land by the appellant was found to be detrimental to the interest of the appellant, the respondents had initiated a disciplinary action against the appellant and by a letter dated 27.05.1999, the appellant prayed for leniency.

5. However, as he was not acting in terms of the said letter dated 27.05.1999 he was served with an Advocate's notice dated 30.08.1999 after which the appellant had stopped construction and except for portion of the occupied land, he did not occupy the entire encroached land. It is projected that by a letter dated 07.02.2000, the appellant had admitted encroachment of the land of the respondents and the matter was taken up in the meeting held on 10.03.2003 amongst the representatives of the respondents, the appellant and the representatives of the garden and Union as well as the Assam Branch of Indian Tea Association, but as no decision could be taken and in the meanwhile

the appellant had retired on 12.03.2004 and as the constructions were resumed again, the suit has been filed for declaration that the appellant was the permissive occupier of the land described in Schedule A(i), for eviction from Schedule A(ii) land by dismantling the illegal and unauthorized construction raised by the appellant and for grant of injunction and other reliefs.

6. The appellant appeared in the suit and contested the suit by filing a written statement by claiming that the appellant was a lessee under the respondent no.1 in respect of the part of suit land measuring 100 sq. feet for which a writing was issued by the Manager of the respondent no.1 with yearly band fixed at Rs.11/- which was not terminated. The learned trial Court framed as many as 7 issues as well as one additional issue to the following effect:-

- (i) *Whether there is a cause of action for the suit?*
- (ii) *Whether the suit is maintainable in law and facts?*
- (iii) *Whether the defendant was a lessee in respect of a plot of suit land under the plaintiff's and whether the said lease is still subsisting?*
- (iv) *Whether the plaintiffs are entitled to a decree for declaration that the defendant was a permissive occupier of the schedule A(i) land under them?*
- (v) *Whether the plaintiff is entitled to a decree for eviction of the defendant by dismantling the unauthorized construction raised by the defendant?*
- (vi) *Whether the plaintiff is entitled for a decree for permanent injunction as prayed for?*
- (vii) *To what relief/ reliefs the parties are entitled to under the law and equity?*

Additional Issue

Whether the allotment of 100 sq. feet of land in favour of the plaintiff stood

lapsed automatically as a result of non-renewal?

7. The issue no.3 was taken up first and in this regard it was held that the appellant was a lessee in respect of 100 sq. feet of land under the respondents. It was further held that the land was a tea garden land and therefore the provisions of Assam Non-Agricultural and Urban Areas Tenancy Act, 1955 would not be applicable and it was held that the Advocate's notice can be treated as notice under section 106 of the Transfer of Property Act. It was further held that the oral lease for more than a year is a lease from month to month and terminable by 15 days notice and accordingly, it was held that the lease between the respondents and the appellant was not subsisting.

8. In respect of additional issue no.8, it was held that there was no renewal of the lease, the allotment of 100 sq. feet of land in favour of the appellant stood lapsed automatically as a result of non-renewal.

9. In respect of issue no.5, it was held that notwithstanding that lease in respect of 100 sq. feet land was not subsisting but the appellant had illegally occupied in respect of other land shown in Schedule A(ii) and also the house standing thereon. Accordingly, it was held that the respondents were entitled for eviction of the appellant by demolishing the unauthorized construction.

10. In respect of issue nos.1 and 2 it was held that the suit was maintainable and there was cause of action in the suit. In respect of issue no.4 it was held that the appellant was not a permissive occupier in respect of Schedule A(i) land and accordingly, in respect of issue no.6 it was held that the respondents were entitled to a decree for permanent injunction and in respect

of issue no.7 it was held that the suit was liable to be decreed on contest without cost. Resultantly, the suit was decreed and the respondents were held entitled for recovery of the suit land by evicting the appellant and any other person(s) occupying the land under him by dismantling the structures standing on Schedule A(i) and Schedule A(ii) land with permanently restraining entry into the suit land described in Schedule A(i) and Schedule A(ii) or to make any new construction thereon after eviction.

11. It may be mentioned that in the proceedings of the suit, while the respondents has examined two witnesses and exhibited the letter dated 27.05.1999 (Ext.1), notice dated 30.08.1999 (Ext.2) and letter dated 07.02.2000 (Ext.3), Power of Attorney (Ext.4) the appellant did not appear as a witness nor examined any other witness and no documents has been exhibited by the appellant.

12. In the appeal preferred by the appellant, the learned first Appellate Court had formulated a point of determination as to whether the lease has been lawfully terminated by the respondents. The learned first appellate Court had revisited the issue nos.3 and 8 and held that when there was no lease, the question of lapse on account of non-renewal does not arise and affirmed the finding of the learned trial Court on issue nos.3 and 8.

13. The finding of the learned trial Court on issue nos.1 and 2 was also affirmed and in respect of issue no.4 it was held that the appellant was a permissive occupier on the suit land and accordingly, it was held that the respondents were entitled to a decree for declaration that the appellant was a

permissive occupier of the suit land. The learned first Appellate Court has disagreed to the finding of the learned trial Court that the appellant was a lessee under the respondents in the absence of any registered instrument and since the appellant had admitted that he has been possessing the suit land on being allowed, it was held that the appellant was a permissive occupier of the suit land.

14. In respect of issue no.5 it was held that the constructions made by the appellant on the suit land were illegal and unauthorized and the decision of the learned trial Court was affirmed. In respect of issues no.6 and 7, the appellant being the permissive occupier and having undertaken illegal construction over the suit land, it was held that the respondents are entitled to the recovery of khas-possession of the suit land after eviction of the appellant therefrom and accordingly, the issues were also decided in the affirmative. Accordingly, the appeal was dismissed with cost.

15. Although the learned senior counsel for the appellant has made his submissions to impress upon the Court that only lease could have been made under section 107 of the Transfer of Property Act, but it has been noted that the respondents had allotted 100 sq. feet land to the appellant. In the written statement filed by the appellant, absolutely no attempt has been made to justify holding of the possession of the land in excess of 100 sq. feet which was allotted to the appellant. The appellant had not denied that such portion of the land where constructions were put up by him was lawfully under his possession. Accordingly, the Court finds that the appellant has not denied that he was holding over land in excess of 100 sq. feet allotted to him and that illegal and

unauthorized constructions were put up by him on the land described in schedule A(i) and Schedule A(ii) of the plaint.

16. As per the provisions of section 107 of the Transfer of Property Act, a lease of immovable property from year to year, or for term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. Apparently there is no registered instrument creating lease, save and accept letter of allotment of land issued by the Manager of respondent no.1 in respect of 100 sq. metre land. Therefore, when the appellant could not demonstrate that the writing in favour of him for allotment of land was a lease, coupled with the fact that the requirement of law under section 107 of the Transfer of Property is that the lease is of immovable property exceeding one year of reserving rent, the existence of lease cannot be presumed and therefore, the finding of the learned first Appellate Court in respect of issue no.4 is held to be correctly decided by holding that in the absence of the registered instrument there cannot be a presumption of a yearly lease. Therefore, in terms of the pleadings made in the written statement of the appellant whereby it is admitted that the lease was for a year and yearly rent was reserved, the Court is unable to accept that under section 107 of the Transfer of Property Act, an oral lease can be created. Accordingly the substantial question of law no.1 is decided against the appellant by holding that no oral lease is either envisaged nor an oral lease can be made under section 107 of the Transfer of Property Act, 1882.

17. In view of the decision of the substantial question of law no.1, the other substantial question of law nos.2, 3 and 4 is not required to be answered because there will be no requirement of determination of lease which did not

exist for which the substantial question of law no.2 is also required to be decided against the appellant. Moreover, as the substantial question of law no.1 has been decided against the appellant, the question of there being a valid lease executed in favour of the appellant stands negated and therefore substantial question of law no.3 is also decided against the appellant. Resultantly, in respect of the substantial question of law no.4, the Court is unable to accept that the learned Courts below had misconstrued the provision of section 106 of the Transfer of Property Act in deciding the issue nos.3 and 8 as the Court has already discarded the plea of there being an oral agreement for lease. The learned senior counsel for the appellant has also raised the issue of appellant being a licensee. The said purported licence was only for a period of one year and in respect of land measuring 100 sq. feet only, which is described in Schedule A(i) and therefore, the Court is unable to accept that the said licence was extended in respect of the land described in Schedule A(ii). Be that as it may the respondents have issued a notice to the appellant to vacate, the said notice would amount intimation to the appellant of the intention of the respondent to revoke the licence. Therefore, the substantial question of law no.4 also fails and is decided against the appellant.

18. Resultantly the appeal fails and the same is dismissed.

19. Under the said circumstances, the Court is not inclined to award cost for this appeal.

20. Let the LCR be transmitted back to their respective Courts.

21. Let the decree be drawn-up and transmitted to the learned trial Court, with a photocopy thereof to the learned First Appellate Court to make it a part of TS no.21/2005 and TA no.18/2009.

JUDGE

Comparing Assistant