

GAHC040007402023



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

Case No. : RSA/5/2023

Techi Menia
W/o Techhi Mania Tara,
a Resident of Model Village, Naharlagun, PO/PS Naharlagun, District Papum Pare,
AP

VERSUS

Taba Takar
S/o Shri Taba Teshi,
a Resident of Model Village, Naharlagun, PO/PS Naharlagun, District Papum Pare,
AP.

Advocate for the Petitioner : Muk Pertin, Senior Advocate

Advocate for the Respondent : Khoda Tama

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 11-01-2024

1. Heard Mr. M. Pertin, learned Senior Counsel assisted by Ms. T. Y. Bhutia, learned counsel for the appellant. Also heard Mr. K. Tama, learned counsel for the sole respondent.

2. The present second appeal under Section 100 of CPC is preferred against the Judgment and Decree dated 24.02.2023 passed in Title Suit No. 19/2017 by the learned Civil Judge (Sr. Division) Yupia, whereby, suit preferred by the respondent was decreed by declaring right, title, and interest over the suit and declaring that the LPC dated 21.05.2012 issued in favour of the appellant/defendant was void and inoperative. The further challenge is Judgment and decree dated 08.05.2023 passed in Title Appeal No. 01/2023 whereby, the Judgment and Decree dated 24.02.2023 passed by the learned trial Court was upheld by dismissing the first appeal preferred by the appellant defendant.
3. The plaintiff instituted the suit claiming that he has inherited the suit land measuring 26888 sq. mtrs from his late father. The plaintiff applied for LPC and in the LPC, land was reduced by giving certain land for approach road. The defendant is a neighbour and his land was adjacent to the western boundary and the defendant purchased the land from one Taba Tath. The Extra Assistant Commissioner, Naharlagun recommended for issuance of LPC to the plaintiff, however, the defendant raised some objection and after some litigation, an agreement was entered between the defendant, her husband, plaintiff and the other necessary parties. Compromise settlement was arrived and accordingly, an agreement was executed on 26.07.2012 and in terms of the said compromise, the plaintiff paid Rs. 8 lakhs to the defendant and the defendant surrendered her LPC along with the sketch map to the plaintiff.
4. Subsequently, on the representation of the plaintiff, the Deputy Commissioner, by an order dated 26.09.2012 suspended the LPC of the defendant and directed the Extra Assistant Commissioner, Naharlagun for fresh consideration of LPC in favour of the plaintiff. Thereafter, the defendant challenged the order dated 26.09.2012 passed by the Deputy Commissioner before this Court by filing writ

petition, which was dismissed by a learned Single Judge and though an appeal was preferred by the defendant before the Hon'ble Division Bench, the same was also dismissed. Subsequently, the LPC of the defendant was directed to be restored by the Deputy Commissioner and on a writ petition being filed by the plaintiff, this Court directed the parties to appear before the Deputy Commissioner. The Deputy Commissioner restored the LPC of the defendant with an observation that the parties should approach competent Court for declaration of the title of the land. Accordingly, suit was filed for declaration of right, title and interest and a declaration that LPC issued in favour of the plaintiff is inoperative.

5. The defendant contested the suit by filing written statement. The defendant admitted that the plaintiff owned a plot of land adjacent to his land and it was pleaded that there was no road to go inside the land of the plaintiff and defendant. Accordingly, plaintiff borrowed an amount 5 Lakhs @ of 5% per month from one Balo Mukh (DW-4) for spending of Rs. 2.50 lakhs on linking road and remaining money to repay his wife's loan. According to the defendant, the plaintiff requested the defendant to stand as guarantor to such loan and it was also averred that plaintiff told the defendant that in the event of his failure to repay the loan to DW-4, the plaintiff will give the land to the defendant. According to the defendant, the plaintiff failed to repay the loan to said Balo Mukh and accordingly, the defendant repaid the loan by paying an amount of Rs. 30 lakhs and thereafter, she applied for LPC and accordingly, the LPC was issued to her after following due process of law.
6. The learned trial Court below framed as many as six issues and after appreciation on evidence and pleadings arrived at the following conclusions:-
 - I. The plaintiff had inherited the suit land from his father inasmuch as the

averment made to that effect has not only been un rebutted but it is admitted that plaintiff is the owner of the suit land. Such decision was arrived at on the basis of evidence of PW-4, PW-5 and PW-6 whose depositions remain uncontroverted regarding ownership of the father of the plaintiff over the suit land. Relying on Exhibit-P(1) to P(23) more particularly the Exhibit P-13 i.e. the settlement agreement dated 26.07.2012. The learned trial Court concluded that in the mutual settlement agreement dated 26.07.2012, the defendant admitted that she obtained LPC over the plaintiff's land wrongly and she agreed to transfer the land and claimed Rs 8.00 lakhs for expenses incurred for obtaining the LPC issued in her favour and said amount was also received by the defendant. Thus, the learned trial Court concluded that the content of the Exhibit P-13 was duly proved substantiating the claim of the plaintiff. Accordingly, it was concluded that the plaintiff is having right, title and interest over the suit land and that the LPC issued in favour the defendant was inoperative. It was further held that in absence of any deed of conveyance, there is no scope for transfer of title of the immovable property.

II. While dealing with the issue, whether relief can be granted to the plaintiff in the suit as a plea was taken that jurisdiction of civil court is barred under Section 95 of Arunachal Pradesh Land Settlement and Records Act, 2000, the learned trial Court held that the jurisdiction of the civil court cannot be ousted when declaration is sought for.

III. The learned appellate Court after re-appreciation of the pleadings and evidence available on record found no illegality and irrationality in the finding of facts and accordingly, concurred with the judgment of the

learned trial Court below.

7. Mr. M. Pertin, learned Senior Counsel for the appellant placing reliance on Exhibit-3 document argues that a substantial question of law arises whether DW-4 Balo Mukh can depose against the terms and conditions and contents of the Exhibit-3 and accordingly, he argues that same is substantial question of law on the basis of which the second appeal should be admitted.
8. Exhibit-D(3) is an agreement between the DW-4 and the defendant. Recitals of such agreement discloses that the plaintiff and defendant borrowed an amount of Rs. 5.00 Lakh from DW-4 for purchase of land and that both of them they have no permanent path to enter into their land. The plaintiff has denied to pay any amount to the DW-4 and therefore, the burden has shifted to the defendant No. 2 who is to pay an amount of Rs. 6.25 lakhs and therefore, the plaintiff shall have no right to use the path/road from the date of execution of the agreement (Exhibit-D-3).
9. A bare perusal of such agreement goes to show that it is an agreement between appellant/defendant and DW-4 and the plaintiff is not party to such agreement. The DW-4 has in his evidence denied the content of such document and it is his case that no money was taken as loan by the plaintiff from him. Rather it is the defendant who has taken money and repaid him the said money and at the time of repayment he brought the agreement Exhibit D-3 and without going into such content, he put his signature in the document. In view of such factual position the learned Court's below has discarded the plea of the defendant inasmuch as the witness of the defendant deposed in a manner, which is contrary to the basic pleading of the defendant. Such determination was concurred by the learned appellate Court.
10. This Court in exercise of its power, while dealing with a second appeal, cannot

interfere with such concurrent finding of fact arrived at by both the learned Courts' below. This court donot find anything on record to conclude that the learned Courts' below have either ignored any material evidence including the Exhibit D-3. or the learned Court's below have drawn wrong inferences from Exhibit D-3 by applying law erroneously inasmuch as an inference of fact from recital or content of a document is a question of fact. The learned Courts' below have also based its decision on evidence and pleading. This Court has not found any perversity in such decisions. That being so, this Court do not find any substantial question of law is proved as urged by the learned Senior Counsel for the appellant.

11. The learned Senior Counsel strenuously relying on a document dated 08.03.2010 argues that such document ought to have been allowed to be exhibited by the learned trial Court below inasmuch as the said document is a deed of simple mortgage creating a mortgage over the suit property by the plaintiff in favour of the defendant with a condition that in the event of failure to pay the loan, the suit land shall get transferred to the mortgagor. The fact remains that during the trial, the defendant filed application for bringing on record the aforesaid document and to exhibit the same. However, the learned trial Court below rejected such prayer and this Court in a revision petition preferred by the defendant also upheld such rejection and dismissed the revision petition. Therefore, an entirely new point raised for the first time before this Court, in the second appellate stage cannot be treated as a question of law involved in this case inasmuch as such issue does not go to the root of the matter.
12. That being the position, this Court finds no question of law is involved in this case not to say about any substantial question of law. Accordingly, the present

second appeal is not admitted for hearing and same stands dismissed. Interim order if any, stands vacated. Parties to bear their own cost.

JUDGE

Comparing Assistant