

GAHC010076672008



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

Case No. : RSA/48/2008

BIJOYLAL GORE @ DARBARILAL GORE and ORS
S/O LT. BECHAN GORE.

2: BORGAHEEN GORE

W/O BIJOYLAL GORE

3: NAHAR SAI GORE

S/O BOJOYLAL GORE
ALL ARE THE RESIDENT OF VILL. GOMNODI
MOUZA-KADAM
PS. BOGINODI
DIST. LAKHIMPUR
ASSA

VERSUS

MOHENDRA HAJAM @ SEAL and ORS
S/O LT. GOPI SEAL @ HAJAM.

2:RUPA SEAL
W/O LT. DILIP SEAL

3:AMRIT SEAL
S/O LT. DILIP SEAL

4:SOBIT KR. SEAL
S/O LT. DILIP SEAL

5:ARATI SEAL
D/O LT. DILIP SEAL

6:BHARATI SEAL

D/O LT. DILIP SEAL
ALL ARE THE R/O VILL. GOMNODI
MOUZA-KADAM
PS. BOGINODI
DIST. LAKHIMPUR
ASSA

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocate for the appellants : Mr. KR Patgiri
Mr. K Barman

Advocate for the respondents : Mr. TJ Mahanta, Senior Advocate
Ms. P Bhattacharjya

Date of hearing : **30.04.2024**
& Judgment

JUDGMENT & ORDER (ORAL)

This is an appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, the Code) against the judgment and decree dated 14.05.2007 in Title Appeal No.07/2006 passed by the Court of the learned Civil Judge Lakhimpur, North Lakhimpur (hereinafter to be referred to as the learned 'First Appellate Court') whereby the learned First Appellate Court interfered with the judgment and decree dated 25.10.2003 in Title Suit No.12/2004 passed by the Court of the learned Munsiff No.1 Lakhimpur, North Lakhimpur (hereinafter to be referred to as the learned 'Trial Court').

2. This Court vide order dated 24.03.2008 admitted the instant appeal by formulating two substantial questions of law which reads as under:

1). Whether the suit property having been fallen within the tribal belt, the plaintiff/respondent can acquire any right, title and interest over the same?

2). Whether the findings of the first appellate court reversing the judgment of the trial court is self contradictory?

3. For deciding as to whether the said two substantial questions of law are involved in the instant appeal, this Court finds it relevant to take note of that the respondents herein as plaintiffs have instituted a suit seeking specific performance of agreement dated 17.09.1984; for declaration of right, title and interest over the suit land in favour of the plaintiffs; for recovery of khas possession and for permanent injunction.

4. The brief facts of the said suit which has been registered and numbered as Title Suit No.12/2004 was that one Joysing Gore vide unregistered sale deed delivered the possession of the land to the defendant No.1. Subsequent thereto, the defendant No.1 got his name recorded in the record of rights. The defendant No.1 as alleged had entered into an agreement with one Dilip Kumar Seal, who was the son of the plaintiff No.1 and the husband and father of the rest of the plaintiffs vide an agreement dated 17.09.1984 for sale of the suit land at a total consideration of Rs.8000/- of which Rs.6970/- was paid to the defendant No.1. Subsequent thereto, the defendant No.1 executed another agreement dated 21.02.1989 whereby the consideration of the sale of the land was increased from Rs.8000/- to Rs.9000/- and it was agreed that the said sale would be made once the no objection certificate is received. It is also alleged that the defendant No.1 did not execute the deed of sale, but rather sworn an affidavit and handed over possession to the plaintiff No.1 with an assurance that the registered sale deed would be executed. Thereupon, the defendants went to Jonai. Subsequent thereto, the defendant No.1 tried to create obstructions to the possession of the plaintiffs for which the plaintiffs were compelled to institute a proceedings under Section 145 which was registered and numbered as Misc.Case No.47/2001. It is under such circumstances, the plaintiffs instituted the suit seeking the relief as sought for.

5. Defendants thereupon submitted a joint written statement along with the counter claim stating, *inter alia*, that the plaintiffs failed to perform their part of the contract and, as such, the suit was not maintainable. It was also stated that the said suit had no legal force and the claim was time-barred, that too, on the basis of a fake document. Accordingly, the defendants not only sought for a dismissal of the suit but sought for a decree for declaration that the plaintiffs had no right title interest and possession over the suit land and for confirmation of the possession of the defendant; and for a declaration that the so called sale deed dated 18.01.2001 and the affidavit dated 18.01.2001 are not enforceable against the defendants and; and for permanent injunction.

6. The plaintiff thereupon filed a written statement against the counter claim reiterating the stand taken in the plaint and sought for dismissal of the counter claim.

7. The learned Trial Court on the basis of the pleadings framed as many as 11(eleven) issues. On behalf of the plaintiff, there were 7(seven) witnesses whose evidence were adduced and the plaintiff exhibited 8(eight) documents, whereas the defendant examined three witnesses and exhibited also 7(seven) documents. The learned Trial Court vide judgment and decree dated 25.10.2006, dismissed the suit and decreed the counter claim of the defendants, thereby decreeing that the defendants have right, title, interest and possession over the suit land; thereby confirming the possession of the suit land in favour of the defendants. It was also held that the so called sale deed dated 18.01.2001 and the affidavit dated 18.01.2001 are not enforceable against the defendants and the plaintiffs were permanently restrained from entering into the suit land and to engage people to disturb the possession of the defendants.

8. Being aggrieved, an appeal was filed by the plaintiffs which was registered and numbered as Title Appeal No.07/2006. The learned First Appellate Court reversed the judgment of the learned Trial Court thereby decreeing the suit in favour of the plaintiffs and dismissing the counter claim of the defendants. The learned First Appellate Court directed the defendants to execute the sale deed in respect of the suit land measuring 8 bighas 2 kathas in favour of the plaintiffs within 90(ninety) days from the date of passing of the judgment and decree and the plaintiff was directed to make payment of Rs.1030/- to the defendant within one month from the date of passing of the judgment and decree.

9. Being aggrieved, the instant appeal has been filed by the defendants and this Court had admitted the appeal by formulating the substantial questions of law which had already been noted above.

10. This Court has duly heard Mr. KR Patgiri, the learned counsel appearing on behalf of the appellant and Mr. TJ Mahanta, the learned senior counsel assisted by Ms. P Bhattacharyya appearing on behalf of the respondents and have given due consideration to the respective submissions.

11. The substantial question of law pertains to as to whether the suit property having fallen within the tribal belt, the plaintiff/respondent can acquire any right, title and interest over the same?

12. At this stage, this Court finds it very pertinent to take note of that this particular plea was duly taken in the written statement filed by the defendant, more particularly, at paragraph 4. On the basis thereof, the issue No.7 was framed.

13. The learned Trial Court while deciding the issue No.7 categorically came to an opinion that Ext.7 which was produced does not contain the name of the plaintiff No.1. At this stage, it is very pertinent to mention that in the plaint the name of plaintiff No.1 is Mohendra Hajam@ Seal son of Late Gopi Seal@ Hajam, whereas in Ext. 7 which was produced, the name was shown as Mohendra Napit, son of Late Sukdev Napit. On the basis of the said categorical finding of fact, the learned Trial Court had disregarded the Ext.7 and taking into account the provisions of Section 164 and 164 (A) of the Assam Land and Revenue Regulation 1886 (for short, the Regulation of 1886) decided the said issue No.7 against the plaintiffs. This Court has duly taken note of the judgment of the learned First Appellate Court and the manner in which the issue No.7 was dealt with. In the opinion of this Court, the learned First Appellate Court had decided the said issue in a perfunctory manner by shirking its responsibility which was adorned upon it being the last court of facts and law.

14. This Court now finds it very pertinent to take note of the judgment of the Supreme Court in Santosh Hazari Vs. Purushottam Tiwari (Dead) by Lrs. reported in (2001) 3 SCC 179 and more particularly to paragraph 15 wherein the Supreme Court had categorically delineated the role of the First Appellate Court.

Paragraph 15 of the said judgment being relevant is reproduced hereinbelow:

15. A perusal of the judgment of the trial court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary

evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See Girijanandini Devi v. Bijendra Narain Choudhary). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (See Madhusudan Das v. Narayanibai) The rule is — and it is nothing more than a rule of practice — that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient

balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh) Secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one."

15. From a perusal of the above settled position of law, it would be seen that while writing a judgment of reversal, the Appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings of facts are based on oral evidence recorded by the same Presiding Judge who authors the judgment, and secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding.

16. In the instant case, it would be seen that the learned First Appellate Court did not at all decide issue No.7 which was vital in the adjudication of the dispute. In the backdrop of the above, if this Court now takes up Section 164 of

the Regulation of 1886, it would be seen that there is a bar of acquisition in a belt or a block to any person not belonging to a class notified under Section 160 or to any person who is not a permanent resident in that belt or block. The plaintiffs herein in view of the specific plea being taken in paragraph 4 of the written statement had the burden to prove that the plaintiffs either belonged to the class of people notified under Section 160 or a permanent resident in that belt or block to get a decree in their favour. However, from the discussions so made by the learned Trial Court while deciding the issue No.7, it is seen that the plaintiff failed to do so and these finding of fact which has been arrived at on the basis of the evidence had not been reversed in the manner which ought to have been done by the learned First Appellate Court.

17. This Court further finds it very pertinent to take note of Section 164 (A) of the Regulation of 1886 which completely bars acquisition of land, which is in contravention of the provisions of Chapter X of the Regulation of 1886 and there cannot be any acquisition of right and title in that land by length of possession whether adverse or not.

18. Under such circumstances, this Court is of the opinion that the first substantial question of law so formulated duly is involved in the instant appeal, *inasmuch as*, the decision so made in the said substantial question of law would alter the course of proceedings.

19. As regards the second substantial question of law, this Court is of the opinion that the same is not a substantial question of law involved in the instant appeal, *inasmuch as*, the said substantial question of law so formulated is too vague. Accordingly, this Court is of the opinion that the second substantial question of law is not involved in the appeal.

20. Consequently, in view of the first substantial question of law having been involved, the instant appeal is allowed thereby setting aside the judgment and decree dated 14.05.2007 in Title Appeal No.07/2006 passed by the Court of the learned Civil Judge Lakhimpur, North Lakhimpur and restoring the judgment and decree dated 25.10.2003 passed in Title Suit No.12/2004 by the learned Munsiff No.1 Lakhimpur, North Lakhimpur.

21. This Court quantifies the costs of the instant appeal @Rs.20,000/- in addition to that, the appellant who is the defendant in the suit shall be entitled to costs throughout.

22. The Registry shall transmit the LCR forthwith to the learned Courts below.

23. The appeal accordingly stands disposed of.

JUDGE

Comparing Assistant