

GAHC010117692024



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

Case No. : RSA/114/2024

HIRANMAYEE DEKA(MAHANTA)
W/O LATE BABUL DEKA,
RESIDENT OF 1ST FLOOR TINIALI, WARD NO. 7, RANGIA TOWN, PS
RANGIA, DIST KAMRUP, ASSAM

VERSUS

ABDUL KALAM AZAD
S/O LATE AISH ALI,
RESIDENT OF VILLAGE AND PO BIHARPARA, PS TAMULPUR, DIST
TAMULPUR, ASSAM BTAD, 781367

Advocate for the Petitioner : MR P UPADHYAY, MS. JYOTI CHETRY,MR A UPADHYAY

Advocate for the Respondent : MR. S K GOSWAMI, MR. R SHARMA

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

18.11.2024

Heard Mr. P. Upadhayay, learned counsel for the appellant and also heard Mr. S.K. Goswami, learned counsel for the sole respondent.

2. This appeal under Section 100 of the CPC, is directed against the judgment and decree dated 19.08.2023 passed by the learned Civil Judge, Kamrup, Amingaon, in Title Appeal No.14/2019 and also the judgment and decree dated 25.03.2019 passed by the

learned Munsiff, Rangia, in Title Suit No.7/2009. It is to be noted here that vide impugned judgment and decree dated 19.08.2023, the learned Civil Judge, Kamrup, Amingaon, has dismissed the Title Appeal No.14/2019 and thereby upheld the judgment and decree dated 25.03.2019 passed by the learned Munsiff, Rangia, in Title Suit No.7/2009.

3. Mr. Upadhayay, learned counsel for the appellant submits that the respondent herein as plaintiff has instituted a title suit, being Title Suit No.7/2009, before the learned Munsiff, Rangia, for ejectment against the appellant from the suit premises described in the schedule of the said plaint and also for realisation of arrear rent of Rs.18,000/- and the cost of the suit under the Assam Urban Areas Rent Control Act, 1972. In the said suit, the appellant herein as defendant filed written statement and after hearing both the parties, the learned Trial Court vide impugned judgment and decree dated 25.03.2019 has decreed the suit with cost and directed the defendant to vacate the suit premises within 2(two) months from the date of the decree and also to pay arrear rent of Rs.18,000/- and further rent of Rs.1,000/- per month from the date of institution of the suit till execution of the decree. Against the said judgment and decree dated 25.03.2019 passed by the learned Munsiff, Rangia, the appellant herein preferred an appeal, being Title Appeal No.14/2019 and vide impugned judgment and decree dated 19.08.2023, the learned First Appellate Court was pleased to dismiss the same and thereby uphold the judgment and decree dated 25.03.2019 passed by the learned Munsiff, Rangia.

4. Mr. Upadhayay further submits that being aggrieved against the judgment and decree so passed by the First Appellate Court, the appellant herein preferred one Civil Revision Petition before this Court, being CRP No.172/2023, under Section 115 of the Code of Civil Procedure. But vide order dated 31.05.2024 in the aforesaid CRP, this Court was pleased to dispose of the matter by observing that the proceeding under Section 115 of the Code is not maintainable in view of the categorical stand taken by the petitioner that she had acquired title of the suit premises on the basis of adverse possession and as such, the same goes outside the purview of the Act of 1972 and the proceeding under section 115 CPC is not maintainable in as much as an appeal lies under Section 100 of the Code of Civil Procedure and dismissed the petition on the ground of maintainability

granting the liberty to the petitioner to file an appeal under Section 100 of the Code of Civil Procedure, subject to the same being permissible in terms of the mandate of Section 100 of the Code and accordingly, the present second appeal is preferred suggesting the following substantial questions of law:-

- (I) Whether the plaintiff is the owner of the suit premises inspite of the fact that the Sale Deed (Exhibit-1) of the plaintiff does not speak of purchase of the suit premises?
- (ii) Whether the finding of the Court below in respect of issue No.3 is perverse?
- (iii) Whether the learned Trial Court having not decided the issue No.4 the First Appellate Court ought to have remanded back the suit to the learned Trial Court instead of taking up the Issue No.4 for decision itself in exercise of power conferred by Order 41 Rule 24 of CPC?
- (iv) Whether the Court below failed to give a finding in issue No.4 about the purchase of the suit premises by the plaintiff from the proforma defendant?
- (v) Whether the learned Courts below are justified in deciding the additional issue No.6(a) regarding the adverse possession against the defendant?

And therefore, Mr. Upadhayay contended that the appeal may be admitted on the substantial questions of law.

5. During the course of hearing, Mr. Upadhayay also submits that the appellant herein has taken the plea of adverse possession before the learned Courts below and the same has not been properly adjudicated by both the learned Courts below.

6. On the other hand, Mr. Goswami, learned counsel for the sole respondent submits that this second appeal is not at all maintainable in view of the bar of Section 8 of the Assam Urban Areas Rent Control Act, 1972, which provides that a landlord or a tenant aggrieved by any decision or order of the Court under the provision of Section 4, 5 and 7(2) of this Act, shall have a right to appeal against the same, as if such decision or order

were a decree in a suit for ejectment of the tenant from the house and as such, Appellate Court's decision shall be final and as the appeal has already been decided by the learned First Appellate Court, in view of this provision of Section 8 of the 1972 Act, the present appeal is not maintainable. Further contention of Mr. Goswami is that second appeal is maintainable only on the substantial question of law and under Section 100 of the CPC the Court cannot go into the question of fact as the First Appellate Court is the final Court on the appreciation of fact and though the issue of adverse possession is taken by the appellant, the same is a question of fact and it cannot be decided by this Court under Section 100 of the CPC and therefore, it is contended to dismiss the appeal.

7. Mr. Goswami, in support of his submission has referred the following decisions:-

- (i) **Md. Abdul Salam v. Smt. Nilima Bhattachariya**, reported in (2021) 0 Supreme(Gau) 617; and
- (ii) **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.**, reported in (1999) 3 SCC 722.

8. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the memo of appeal and the grounds mentioned therein and also perused the impugned judgment and decree 25.03.2019 passed by the learned Munsiff, Rangia and also the judgment and decree dated 19.08.2023 passed by the learned Civil Judge, Kamrup, Amingaon and also the order dated 31.05.2024 passed by this Court in CRP No.172/2023.

9. It is to be noted here that while dismissing the revision petition under Section 115 of the Code of Civil Procedure as not maintainable, a coordinate bench of this Court has observed by granting liberty to the appellant to file an appeal under Section 100 of the Code, subject to the same being permissible in terms of the mandate of Section 100 of the Code.

10. It is to be noted here by catena of decisions Hon'ble Supreme Court has held that second appeal is admissible only on the substantial question of law. In the case of

Commissioner, Hindu Religious & Charitable Endowments v. P. Shanmugama, reported in (2005) 9 SCC 232, the Hon'ble Supreme Court has held that the High Court has no jurisdiction in second appeal to interfere with the finding of facts.

11. Again, the Hon'ble Supreme Court in the case of **State of Kerala v. Mohd. Kunhi**, reported in (2005) 10 SCC 139, has reiterated the same principle that the High Court is not justified in interfering with the concurrent findings of fact. This court observed that, in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure.

12. Again, in the case of **Harjeet Singh v. Amrik Singh**, reported in (2005) 12 SCC 270, the Apex Court with anguish has mentioned that the High Court has no jurisdiction to interfere with the findings of fact arrived at by the first appellate court. In this case, the findings of the Trial Court and the lower appellate court regarding readiness and willingness to perform their part of contract was set aside by the High Court in its jurisdiction under Section 100 C.P.C. This court, while setting aside the judgment of the High Court, observed that the High Court was not justified in interfering with the concurrent findings of fact arrived at by the courts below.

13. And also in the case of **Narayanan Rajendran & Anr. vs. Lekshmy Sarojini & Ors.**, reported in (2009) 5 SCC 264, referring to the observation made by the Judicial Committee of the Privy Council in 1890, it is stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however, gross or inexcusable the error may seem to be and they added a note of warning that no Court in India has power to add to, or enlarge, the grounds specified in Section 100 of the Code of Civil Procedure. Thereafter, referring to various decisions of Privy Council and also of Hon'ble Supreme Court, it has been observed at paragraph No.63 of the said decision that the analysis of cases decided by the Privy Council and this Court prior to 1976 clearly indicates the scope of interference under Section 100 CPC by this Court. Even prior to amendment, the consistent position has been that the Courts should not interfere with the concurrent findings of facts.

14. Thereafter, again in paragraph No.65 of Narayanan Rajendran (supra), it has been observed as under:-

“65. The fact that, in a series of cases, this court was compelled to interfere was because the true legislative intendment and scope of Section 100 C.P.C. have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.”

15. In the case in hand, from a perusal of the impugned judgment and decree, so passed by the Trial Court indicates that the learned Trial Court had framed as many as eight issues while deciding the suit. These are:-

- (i) Whether the suit is maintainable in law as well as fact?
- (ii) Whether the suit is bad for non-joinder of necessary parties?
- (iii) Whether there was any relationship of landlord and tenant between main defendant and pro-forma defendant?
- (iv) Whether the plaintiff purchased the suit land and premises from the pro-forma defendants and thus became the owner thereof?
- (v) Whether there is any relationship of landlord and tenant between plaintiff and main defendant?
- (vi) Whether the main defendant has defaulted in payment of rent to the plaintiff and accordingly she is liable to be evicted?
- (vii) Whether the plaintiff is entitled to get a decree as prayed

for?

(viii) To what relief/relief(s) plaintiff is entitled to?

15.1. It also appears that a additional issue was also framed as issue No.6(a) which read as under:-

6(a) Whether the defendant occupied the suit premises against the will of the pro-forma defendant since 01.04.1994 and acquired hostile title upon the suit premises after 12 years in 31st March 2006 ?

16. It also appears that thereafter the learned Trial Court had discussed the evidence adduced by the parties and also considered the documents exhibited and considering the same arrived at the finding that the suit is maintainable and it is not bad for non joinder of the legal heirs of proforma defendant No.1 as the plaintiff, having purchased the suit premises entered into the shoes of landlord and that there is landlord and tenants relationship between the plaintiff and defendant No.1 and that the defendant No.1 had failed to discharge the burden of establishing adverse possession and that being a tenant the defendant No.1 cannot deny the title of landlord in view of Section 16 of the Evidence Act, and thereafter decided all the issues, except however, the issue No.(iv) wherein no decision was rendered.

17. It also appears that the learned First Appellate Court in the impugned judgment and decree dated 19.08.2023, had considered the submissions and grounds so taken in the appeal and arrived at a finding that the learned Trial Court had rightly decided all the issues, including the issue No.(iii) and 6(a) and arrives at finding that the learned Trial Court had rightly arrived at a finding that that the defendant was tenant of Late Madhab Das (pro-forma defendant) and she does not have the title of the suit property on the strength of adverse possession.

18. I have carefully gone through the suggested substantial questions of law in this

appeal and also considered the submissions so advanced by the learned counsel for the both the parties. But, in view of the concurrent finding of fact by the learned First Appellate Court in the impugned judgment and decree dated 19.08.2023, and also in the judgment and decree dated 25.03.2019, passed by the learned Trial Court, this Court is unable to agree with the submission of Mr. Upadhayay that any substantial question of law is involved in this appeal.

19. The substantial questions of law, so suggested in this appeal, are in fact not substantial question of law, rather the same are questions of fact and this Court, in a second appeal, cannot re-appreciate the same and arrive at an independent finding. It is well settled that concurrent finding of fact, so arrived at by the learned First Appellate Court and also by the Trial Court is binding upon this Court. Reference in this context can be made to the decisions of Hon'ble Supreme Court in **Narayanan Rajendran (supra)**, **P. Shanmugama (supra)**, **Mohd. Kunhi (supra)** and **Harjeet Singh (supra)**.

20. Additionally, there is a clear bar under Section 8 of the Assam Urban Areas Rent Control Act, 1972, which says that the decision of the Appellate Court is final, in case of which appeal has been preferred under Section 4, 5 and 7(2) of the Act. This is the mandate of law, and this Court has no discretion to disobey the mandate of law.

21. Because of this bar and also on the ground of absence of substantial question of law, this Court is of the view that the appeal cannot be admitted for hearing.

22. In the result, I find no merit in this appeal and accordingly, same stands dismissed.

23.

JUDGE

Comparing Assistant