

GAHC010018972014



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

Linked Case : **RSA/168/2013**

SHAMBHU BAISHYA
S/O HAR KANTA BAISHYA
R/O GOPAL BAZAR
MOUZA-KHATA
NALBARI TOWN
PS/DIST. NALBARI
ASSAM.

VERSUS

NARAYAN TALUKDAR
S/O LT. MADU RAM TALUKDAR
R/O GOPAL BAZAR
MOUZA-KHATA
NALBARI TOWN
PS/DIST. NALBARI
ASSAM.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the appellant : Shri B. D. Deka, Advocate.

Advocates for the respondent : Shri D. Choudhury, Advocate.

Date of hearing : **11.06.2024**

Date of Judgment : **11.06.2024**

JUDGMENT & ORDER

The instant second appeal is preferred under Section 100 of the Code of Criminal Procedure, 1908 against a judgment and decree dated 30.03.2013 passed by the learned District Judge, Nalbari in Title Appeal No. 17/2007 upon dismissing the appeal and upholding the judgment and decree dated 06.07.2007 passed by the learned Civil Judge, (Senior Division), Nalbari in Title Suit No. 34/2004. The appellant was the defendant in the suit which was instituted for specific performance of a contract.

2. The projected case of the plaintiff was that an agreement was entered into by the plaintiff with the defendant dated 29.07.2003 for sale of 1 Katha 10 Lechas of land with two rooms. As per the agreement, the total consideration was Rs.3,40,000/- (Rupees Three Lakhs Forty Thousand) only, out of which the plaintiff had paid an amount of Rs. 2,20,000/- (Rupees Two Lakhs Twenty Thousand) only and the possession of the suit premises was already with the plaintiff. It is also stated that the son of the plaintiff was a tenant in the suit premises.

3. The appellant/defendant had filed the written statement in which a defence was stated that owing to certain monetary transaction, the plaintiff were in custody of three signed stamp papers. It was however admitted that the appellant/defendant was ready and willing to discharge his part of the agreement provided the three stamp papers were returned to him.

4. The learned Trial Court after consideration of the facts and circumstances and considering the materials on record and the evidence of the parties had decreed the suit which was also affirmed by the First Appellate Court.

5. This Court vide the order dated 29.08.2013 had formulated the following substantial questions of law:-

(i) Whether the learned first appellate court was justified in holding that the oral evidence, in view of Section 92 of the Evidence Act, 1972, is completely excluded by ignoring the proviso to Section 92 of the said Act?

(ii) Whether the court below was justified in decreeing the suit without weighing the parameters set forth in sub section 2 of Section 20 of the Specific Relief Act, 1963?"

6. I have heard Shri B. D. Deka, learned counsel for the appellant whereas the respondent is represented by Shri D. Choudhury, learned counsel. The LCRs which have been requisitioned have also been perused.

7. Shri Deka, the learned counsel for the appellant has submitted that prior to the legal notice issued on behalf of the petitioner on 27.02.2004, a similar legal notice was also issued on behalf of the son of the plaintiff, namely, Nirmal Talukdar pertaining to an agreement dated 13.02.2002. The learned counsel has also referred to another legal notice issued by the same advocate on behalf of another individual, Shri Bipul Dutta making certain claims. It is contended that all the aforesaid three legal notices clearly are based on the stamp papers which were in the custody of the plaintiff owing to certain monetary transaction as mentioned above. It is submitted that the relief claimed under the Specific Relief Act is an equitable relief wherein the conduct of the plaintiff is of immense importance. In the instant case, the conduct of the plaintiff being doubtful, the learned Court below ought not to have passed the impugned judgments decreeing the suit.

8. Shri Deka, learned counsel has however fairly submitted that in the written statement there is an admission regarding the willingness and readiness of the

defendant to discharge his obligations as per the agreement dated 29.07.2003 which however is qualified by the condition that the three signed stamp papers are to be returned to the defendant.

9. It is submitted that while discussing the Issue Nos. 3 & 5, though the learned Court had made an observation regarding the requirement to return the stamp papers, the said aspect was lost sight of while decreeing the suit. The learned counsel accordingly submits that intervention by this Court is required.

10. *Per contra*, Shri Choudhury, the learned counsel for the respondent has submitted that the Legal Notice dated 10.06.2003 issued on behalf of his son, Nirmal Talukdar is for a different piece of land which may be covered by the same Dag number. It is submitted that the present suit was on the subject matter of an agreement dated 29.07.2003 in connection with which the legal notice was issued on his behalf on 27.03.2004 and therefore the said issue would not be relevant for the adjudication of the present */is*. It is submitted that the defendant having clearly admitted in the written statement regarding the basic facts and also expressing his readiness and willingness to discharge his obligation under the agreement dated 29.07.2003, no fault can be attributed to the decree passed by the Trial Court which has been affirmed by the First Appellate Court. It is submitted that there is no manner of doubt that the suit property including the two rooms were already in the possession of the plaintiff and in the plaint and evidence, there was a clear statement that the son of the plaintiff, Nirmal Talukdar was in possession of the two rooms and the land as tenant.

11. The rival submissions have been duly considered and the materials placed

before this Court including the LCRs have been carefully examined.

12. There is no manner of doubt that the reliefs under the Specific Relief Act is in the nature of equitable relief and therefore the conduct of the party approaching the Court for any such relief is to be free from any *mala fide*. However, in the instant case, apart from making an averment that a similar legal notice was issued on 10.06.2003 on behalf of the son of the plaintiff and another legal notice on behalf of another individual Bipul Dutta, no substantial materials have been able to be brought to the light to question the conduct of the plaintiff. This Court has noticed that while the legal notice pertaining to the suit was issued on 27.02.2004 which pertains to the agreement dated 29.07.2003, the legal notice issued on behalf of the son of the plaintiff, Nirmal Talukdar was prior in point of time i.e. 10.06.2003 and the agreement is dated 13.02.2002 which is a different agreement. Though it appears that the description of the property is over the same Dag, in the interest of justice, this Court has examined the said aspect and has found that the area of land is different. Shri Choudhury, the learned counsel for the respondent has also clarified that under the said Dag, there is a total area of about 4 kathas of land and the suit land constitutes only 1 Katha 10 Lechas.

13. What is also noticeable in this case is certain admissions made in the written statement. A defendant in his written statement is expected to make all defence while contesting a suit and the pleadings make therein would have a significant relevance in the adjudication of the */is*. In the instant case, in the written statement so far as in paragraph 11, there is a clear admission that the defendant was willing and ready to execute the sale deed. For ready reference, the said averments of the written statement is extracted herein below:

“11. That the defendant is still willing and ready to execute this sale deed as per terms of this agreement if the balance amount is paid by this plaintiff and the three blank stamp paper are handed over to this defendant.”

14. The appellant has contended that the aforesaid statement was qualified with a condition of returning the stamp papers to the defendant. Though an observation has been made while deciding issue nos. 3 & 5 for return of such stamp papers, this Court is of the view that in absence of a counter claim on the issue, the decree so passed cannot encompass the aforesaid observation.

15. In view of the aforesaid discussions, this Court is of the considered opinion that the plaintiff was able to make out a case for grant of a decree for specific performance with regard to the agreement dated 29.07.2003 and accordingly the impugned judgment of the First Appellate Court by which the judgment of the Trial Court was affirmed does not call for any interference.

16. As a consequence thereof, the substantial questions of law framed by this Court in the order dated 29.08.2013 are decided against the appellant and the appeal is accordingly dismissed.

17. Sent back the records immediately.

JUDGE

Comparing Assistant