

GAHC010202412016



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

Case No. : RSA/44/2016

SRI GUNJALAL DAS and ANR
S/O LATE KUNJALAL DAS, R/O B.O.C. GATE, NORTH BONGAIGAON, P.O.,
P.S. and DIST. BONGAIGAON, ASSAM.

2: DR. GOLOKLAL DAS
S/O LATE KUNJALAL DAS
R/O B.O.C. GATE
NORTH BONGAIGAON
P.O.
P.S. and DIST. BONGAIGAON
ASSAM

VERSUS

SRI PRAFULLA KR. NATH
S/O LATE RAM MOHAN NATH, R/O VILL. NO. 2 BAKHRAPA BIRJHORA TEA
ESTATE, P.O. , P.S. and DIST. BONGAIGAON, ASSAM.

Advocate for the Petitioner : MS.L SHARMA, MR.S S SHARMA,MRA SHARMA,MR.B J
MUKHERJEE

Advocate for the Respondent : MS.A BEGUM, MR.S K SAHARIA,MR D C NATH,MR.M DAS

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (ORAL)

05.11.2024

Heard Mr. B.J. Mukherjee, learned counsel for the appellants and Mr. S.K.

Saharia, learned counsel for the respondent.

2. This second appeal is directed against the judgment and decree dated 07.09.2015, passed by the learned Civil Judge, Bongaigaon, in Title Appeal No. 18/2012.

3. It is to be noted here that vide impugned judgment and decree 07.09.2015, the learned Civil Judge, Bongaigaon had dismissed the appeal and affirmed the judgment and decree dated 18.05.2012, passed by the learned Munsiff, Bongaigaon, in Title Suit No. 22/2006,

4. Mr. Mukherjee, learned counsel for the appellants submits that while admitting this appeal for hearing, vide order dated 22.02.2016, no substantial question of law was framed and in the order dated 22.02.2016, only the grounds have been mentioned and as such, there is a requirement of framing the substantial question of law here in this appeal. Mr. Mukherjee referring to page No. 3 of the memo of appeal, submits that there he has suggested three substantial questions of law and the same are read as under:

1. Whether the decree for specific performance of contract could have been passed in respect of a joint and un-partitioned plot of land on the strength of agreement entered into by one of the joint owners and denied and objected to by the other joint owner?

2. Whether Ext.7, a receipt issued by defendant No. 1 could have been binding upon defendant No. 2, when such receipt was not issued as per his knowledge or consent, nor the said receipt had any link or relevancy or connection with the alleged agreement entered between plaintiff and defendant No. 1 and disputed by defendant No. 2?

3. Whether in absence of any evidence, oral or documentary that defendant No. 2 had agreed to sell the un-partitioned

joint property or received any payment, any decree for specific performance of contract could have been passed and whether such a decree could have been enforceable on defendant No. 2?

5. Accordingly, Mr. Mukherjee submits that out of the three suggested substantial questions of law, all the substantial questions of law are material and accordingly, it is contended to formulate the aforesaid substantial questions of law to decide this appeal.

6. Whereas, Mr. Saharia, learned counsel for the respondent has vehemently opposed the submission so advanced by Mr. Mukherjee, learned counsel for the appellants. Mr. Saharia referring to Ext.1, a Sale Agreement, of the Title Suit No. 22/2006, submits that vide said Agreement, both the brothers have agreed to sale a plot of land measuring 1 Katha 5 Lechas, as described in Schedule-‘B’ of the plaint, fixing sale consideration @ Rs. 42,000/- and both of them had put their signatures therein. Mr. Saharia further submits that vide Money Receipt-Ext.7, one of the brothers had received an amount of Rs. 30,000/- from the respondent being the sale consideration for said plot of land and that the decree was granted by the learned trial Court in respect of the same plot of land measuring 1 Katha 5 Lechas described in Schedule-‘B’ of the plaint and that the learned trial Court and the learned first appellate Court both have considered all those aspects in their respective judgments and as such, no substantial question of law is involved in this appeal and therefore, it is contended to dismiss the same.

7. Having heard the submissions of the learned Advocates of both sides, I have carefully gone through the memo of appeal and the grounds mentioned therein and also perused the impugned judgment and decree dated 07.09.2015, passed by the learned Civil Judge, Bongaigaon, in Title Appeal No. 18/2012, and

the judgment and decree dated 18.05.2012, passed by the learned Munsiff, Bongaigaon, in Title Suit No. 22/2006, and also gone through the suggested substantial questions of law.

8. It appears that the respondent herein had instituted a Title Suit No.22 of 2006 for specific performance of contract and also for injunction. His case is that he entered into an oral agreement for sale of a plot of land measuring 1 katha 5 lecha as described in Schedule-'B' land which is a part of the Schedule 'A' land, fixing the sale consideration at Rs.42,000/ in the month of February 2001, from the appellants herein. Accordingly, the parties have applied for permission from Bongaigaon Development Authority and the permission was obtained on 21.03.2001. Thereafter a written agreement was executed between the parties for the said plot of land on 25.04.2001. The appellants had received the entire sale consideration and handed over possession of the land to the respondent herein and agreed to execute the sale deed as soon as the sale permission is obtained from the Deputy Commissioner, Bongaigaon. Thereafter sale permission was obtained on 01.08.2001. Thereafter, the appellants also agreed to sell remaining plot of land measuring 2 katha 10 lechas, which is Schedule 'C' land, to the wife of the respondent. And all the required formalities such as NOC, Sale permission was obtained and the respondent had also purchased stamp papers. Thereafter, the respondent and his wife arrived at office of the Sub-Registrar on 15.03.2002 and sale deed was prepared but, the appellants herein had agreed to execute sale deed in respect of Schedule-'C' land only in favour of the wife of the respondent and refused to execute sale deed in respect of Schedule-'B' land. But, they assured to execute the same within two months but after expiry of two months they avoided on this or that pretext and finally they had asked for raising the sale consideration to Rs. 82,0000/. Thereafter,

appellant No.1 on 25.11.2004 received another sum of Rs. 30,000/ as advance and issued a receipt and there remains to be paid a sum of Rs. 10,000/ only. Thereafter, the appellants herein tried to sell the said land to others on higher sale consideration and tried to dispossess the respondent and apprehending further such attempt the respondent herein had instituted a Misc Case No. 01/2005 and ex-parte order was passed therein confirming possession of the respondent. Thereafter, the appellant No.1 had meet the respondent and assured to execute the sale deed shortly and thereafter applied jointly on 14.06.2005 for extension of sale permission to the Deputy Commissioner and accordingly, sale permission was extended till 22.06.2005. As such the respondent herein was ready to execute the sale deed but the appellant did not execute the sale deed within the extended time. Therefore, the respondent had instituted the Title Suit for specific performance of the contract.

9. The appellants herein contested the said suit by filing written statement and counter claim. Their contention was that they had not executed the agreement and not received any amount from the respondent for selling of the suit land and that the suit land is still under their possession. In the counter claim, appellant No.2 had contended that total plot of land measuring 3 katha 15 lechas i.e. Schedule-'A' land of the plaint and Schedule-'M' land of the counter claim, which is a joint property of the appellants and without formal partition of shares the appellant No.1 has no right to execute the alleged agreement dated 25.11.2004 in respect of the suit land. And as such the same may be declared void and illegal and therefore, the same may be cancelled.

10. Upon the said pleadings the learned trial court had framed following issues:-

(i) Whether there is cause of action ?

- (ii) Whether the suit is maintainable ?
- (iii) Whether the suit is under valued ?
- (iv) Whether the defendants executed any agreement of sale on 25.04.2001 in respect of the suit land in favour of the plaintiff?
- (v) Whether the defendants received advanced amount of consideration as claimed by the plaintiff?
- (vi) Whether the defendants refused to execute the sale deed in respect of the suit land as per the terms of the agreement?
- (vii) Whether the plaintiff is entitled to get a decree of specific performance of contract as prayed for?
- (viii) Whether the counter claim of the defendant No.2 and/or the suit is barred by limitation?
- (ix) Whether the counter claim of the defendant No.2 is maintainable?
- (x) Whether the defendant No.2 is entitled to get decree on his counter claim?
- xi) To what relief/relieves the parties are entitled to?

11. Thereafter, hearing both the parties, and considering the evidence adduced by the parties the learned trial court had decided the Issue No. (i), (ii), (iv), (v), (vi), (vii), (viii) & (xi) in favour of the plaintiff/respondent and issue No. (iii) in favour of the defendants/appellants and issue No. (ix) and (x) against the defendants. Thereafter, the learned trial court had decreed the suit. And dismissed the counter claim.

12. Then being aggrieved, the appellants herein had preferred the Title Appeal No. 18/2012, before the learned Civil Judge, Bongaigaon challenging the judgement and decree of the learned trial court. Then hearing both sides the learned first appellate court vide impugned judgment and decree dated 07.09.2015, had dismissed the appeal and affirmed the judgment and decree dated 18.05.2012, passed by the learned Munsiff, Bongaigaon, in Title Suit No. 22/2006.

13. Thus, it appears that there is concurrent finding of facts by the learned trial Court and also by the learned first appellate Court. While deciding the issue No. 4 and 5 the learned trial court has held that the appellants herein had entered into an agreement, Exhibit-1 for sale of the suit land and received advance sum of Rs.42,000/. It also appears that while deciding the issue No.8 the learned trial court had held that vide Exhibit-7, defendant No. 1 had received a sum of Rs.30,000/ on 25.11.2004 and executed Exhibit-7 and the same is duly proved and thereafter, jointly applied for extension of the sale permission to the Deputy Commissioner and the same was obtained and despite the defendants had failed to execute the sale deed.

14. It also appears that Ext.1, the Sale Agreement, of the Title Suit No. 22/2006, both the brothers have agreed to sale a plot of land measuring 1 Katha 5 Lechas, as described in Schedule-'B' of the plaint, fixing sale consideration @ Rs. 42,000/- and the signatures of both the brothers appears therein. Further, vide money receipt- Ext. 7, one of the brothers had received an amount of Rs. 30,000/- being the enhanced sale consideration from the respondent for the plot of land measuring 1 Katha 5 Lechas described in

Schedule-'B' of the plaint. It also appears that the decree of specific performance of contract was passed by the learned trial Court in respect of the same plot of land measuring 1 Katha 5 Lechas described in Schedule-'B' of the plaint.

15. Thus, having examined the impugned judgments and decree, so passed by the learned trial Court as well as the learned first appellate Court, and also considering the suggested substantial questions of law in the light of the facts and circumstances on the record, this Court is of the view that no substantial question of law is involved in this appeal. Mr. Saharia, the learned counsel for the respondent has rightly pointed this out and I find substance in the same.

16. In the case in hand, it appears that both the learned trial Court and the learned first appellate Court have rightly appreciated the facts in its proper perspective and arrived at a reasoned decision and the same are based upon the pleadings of the parties and also the documents exhibited before the learned trial Court. And concurrent finding of both the Courts below in respect of the facts are binding upon this Court.

17. It is to be noted here that Hon'ble Supreme Court in a catena of decisions, has held that concurrent finding of facts by the learned trial Court as well as the learned first appellate Court is binding upon the High Court. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Chandrika Singh (Dead) by LRS and Anr. vs. Sarjug Singh and Anr.**, reported in (2006) 12 SCC 49, wherein it has been held as under:

"12. While exercising its jurisdiction under Section 100 of the Code of Civil Procedure, the High Court is required to formulate a substantial question of law in relation to a finding of fact. The High Court exercises a limited

jurisdiction in that behalf. Ordinarily unless there exists a sufficient and cogent reason, the findings of fact arrived at by the courts below are binding on the High Court..."

18. In the case of **Chacko and Anr. vs. Mahadevan**, reported in (2007) 7 SCC 363, while dealing with the jurisdiction of Sections 96 and 100 of the CPC, Hon'ble Supreme Court has held as under:

"6. It may be mentioned that in a first appeal filed under Section 96 CPC, the appellate court can go into questions of fact, whereas in a second appeal filed under Section 100 CPC the High Court cannot interfere with the findings of fact of the first appellate court, and it is confined only to questions of law."

19. In the result, I find no substantial question of law involved here in this appeal and therefore, this Court is inclined to dismiss this appeal. Send down the records to the learned Courts below along with a copy of this judgment and order. The parties have to bear their own cost.

JUDGE

Comparing Assistant