GAHC010195142019

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

Case No. : CRP/124/2019

SULOCHANA DEVI CHOUDHURY AND 7 ORS.
WIDOW OF LT. RAM AVATAR CHOUDHURY, R/O C/O DR. MANOJ KALITA, H.NO. 17, P.N.G.B. ROAD, SHANTIPUR HILL SIDE(WEST), GUWAHATI-781009

2: MANISH CHOUDHURY
S/O LT. RAM AVATAR CHOUDHURY
R/O C/O DR. MANOJ KALITA
H.NO. 17
P.N.G.B. ROAD
SHANTIPUR HILL SIDE(WEST)
GUWAHATI-781009

3: NIKITA CHOUDHURY
D/O LT. RAM AVATAR CHOUDHURY
R/O C/O DR. MANOJ KALITA
H.NO. 17
P.N.G.B. ROAD
SHANTIPUR HILL SIDE(WEST)
GUWAHATI-781009

4: SUNITA AGARWAL
D/O LT. RAM AVATAR CHOUDHURY
W/O SHRI SUNIL TULSIYAN AGARWAL
C/O SHRI KESHRI CHAND TULSIYAN
FANCY VALLYE
P.O. TURA-794001

5: DIPIKA PATWARY
D/O LT. RAM AVATAR CHOUDHRUY
W/O SHRI SHANKAR PATOWARY
C/O MANGAL CHAND PATOWARY
LNB ROAD
P.O. MANGALDOI-784125

DIST. DARRANG (ASSAM)

6: CHANDA DEVI CHOUDHURY
W/O LT. ATMARAM CHOUDHURY
R/O H.NO. 62
NEAR SHANTIPUR ATHLETIC CLUB
SHANTIPUR MAIN ROAD
GUWAHATI-781009
DIST. KAMRUP (M)
ASSAM

7: RANJIT CHOUDHURY
S/O ATMARAM CHOUDHURY
R/O H.NO. 62
NEAR SHANTIPUR ATHLETIC CLUB
SHANTIPUR MAIN ROAD
GUWAHATI-781009, DIST. KAMRUP (M), ASSAM

8: DEEPAK CHOUDHURY
S/O LT. ATMARAM CHOUDHRUY
C/O M/S CHETRAM CHAGANLAL AND SONS M.M. ROAD
FANCY BAZAR, GUWAHATI-781001
R/O H.NO. 62
NEAR SHANTIPUR ATHLETIC CLUB
SHANTIPUR MAIN ROAD, GUWAHATI-781009, DIST. KAMRUP (M)
ASSA

VERSUS

BINOD KUMAR JAIN
S/O LT. PANNALAL JAIN, R/O DANISH ROAD, PANBAZAR, P.S. PANBAZAR,
GUWAHATI-781001, ASSAM

Advocate for the Petitioner : MR. S SHARMA
Advocate for the Respondent : MS. O PHUKAN

BEFORE
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

ORDER

Date : 18-12-2020

Heard Mr. S. J. Sarma, learned counsel for the petitioners . Also heard Mr. S. Dutta, learned Senior Counsel assisted by Ms. M. Barchetia, learned counsel for the respondent.

The respondent as the plaintiff filed Title Suit No. 265/2012 in the court of learned

Munsiff No.1, Kamrup(M) at Guwahati seeking for the following reliefs in respect of the suit properties described in the plaint as Schedule A,B,C, and D:

> "*(a) a decree for declaration that it is the plaintiff alone who has the right to raise construction over his land or to make repairs of the premises described in the schedule 'B', 'C' and 'D'(which were burn in the fire)*
>
> *(b) For further declaration that the defendants and each of them have no right and authority to make construction upon the land described in Schedule 'A' and also Schedule 'B','C' and 'D' under the occupation of the defendants No.2(2 and 2(a)) and 3 respectively.*
>
> *(c) For permanent injunction restraining the defendants and each of them from making any construction or making any repairs over the land in question and upon the land and premises described in Schedule 'B','C' and 'D' under the occupation of the defendants No. 1,2(i.e 2 and 2(a) and 3 respective.*
>
> *(d) For full cost of the suit may also be decreed.*
>
> *(e) Other relief or reliefs to which the plaintiff is entitled to under the law and equity."*

The defendants petitioners filed written statement denying the pleadings in the plaint. On the basis of the pleadings the learned court of Munsiff No. 1 framed the following issues:

> "*ISSUES*
>
> 1. *Is there any cause of action for the suit?*
> 2. *Whether the suit is properly valued or properly court fee paid?*
> 3. *Whether the suit is barred by the law of limitation ?*
> 4. *Whether the plaintiff has right, title & interest on suit land?*
> 5. *Whether the plaintiff is entitled to get a decree as prayed for ?*
> 6. *To what relief or reliefs the plaintiff is entitled to?"*

Both the parties led evidence and finally vide judgment and decree dated 30.7.2016 the learned of Munsiff No.1 Kamrup(M) decreed the suit as follows:

> "*i) A decree for declaration for ejectment of the defendant from the suit premises, described in the schedule-B,C and D standing on the schedule-A land by giving delivery of khass possession to the plaintiff by removing all the men, materials and belongings of the defendants.*
>
> *ii) A decree for declaration that the defendants and each of them have no right and authority to make construction upon the land described in Schedule-A and also Schedule 'B','C' and 'D' under the occupation of the defendant nos. 1 and 2(i.e 2 and 2(a)) and 3 respectively.*
>
> *iii) For permanent injunction restraining the defendants and each of them from making any construction or making any repairs over the land in question and upon the land and premises described in Schedule B, C and D under the occupation of the defendant nos 1,2(i.e. No.2 and 2(a)) and 3 respectively.*
>
> *iv) the defendants cannot claim damages for reconstruction of the tenanted premises as the defendant had reconstructed the tenanted premises without the written consent of the plaintiff.*

In the suit the plaintiff respondent did not seek for the relief of ejectment of the defendants petitioners and as such no issue to that effect was framed by the trial court. Moreover the plaintiff respondent made a specific statement in the plaint stating that he would file a separate suit for ejectmet of the defendants petitioners. But even then the trial court passed the decree for ejectment of the defendants petitioners.

Being aggrieved by the said impugned judgment and decree dated 30.7.2016 passed by the learned Munsiff No.1 the present petitioners filed Title Appeal No. 87/2016 in the Court of learned Civil Judge Sr. Div.No.3, Kamrup(M) at Guwahati challenging the judgment and decree of the trial court. The learned first appellate court after hearing the arguments of the learned counsel representing the petitioners and the respondent was satisfied to draw up the following points for determination:

> "*Points for determination in this appeal is:*
>
> 1. *Whether repairing and renovation work undertaken in the suit premises on account of part damate by fire by te defendant is justified ?*
> 2. *Whether passing of decree for declaration of right , title and interest of the plaintiff and a decree for ejectment of defendant from the suit premises without any specific prayer in the plaint by the plaintiff is sustainable in the eye of law?*

The learned first appellate court while deciding the point No. 2 held that by applying the provision of Order 7 Rule 7 CPC the relief granted by the learned Munsiff No.1 so far ejectment of the defendants petitioners from the suit premises is well within the competence of the trial court when the evidence on record shows that the defendants admittedly did not pay rent to the plaintiff respondent and carried out construction over the suit premises without the consent of the plaintiffs bringing the case within the ambit of Section 5(1)(a)(e) of the Assam Urban Areas Rent Control Act giving a ground for ejectment to the plaintiff.

Mr. Sarma submits that the learned court below more specifically, the first appellate court was totally wrong in applying its jurisdiction holding that the learned Munsiff No.1 had the authority to mould the relief as required under Order 7 Rule 7 CPC. Mr. Dutta learned Senior Counsel on the other hand, fairly submits that in the present factual matrix pleaded in the plaint, the submission of Mr. Sarma is correct inasmuch as there was no pleadings and

relief sought for by the plaintiff respondent seeking for ejectment the defendants petitioners from the suit premises.

I have perused the judgment passed by the learned first appellate court more specifically the discussion and findings Point No. 2 for determination wherein the learned Court below relying catena of decisions of the Apex Court came to the conclusion that ordinarily the court cannot grant relief to the plaintiff in a case where there was no foundation of relief and when the other side had no opportunity to meet the grounds for the relief granted. But court can give a decree in a case in which the defendant himself makes on his own an express admission.

In the present case in hand, as hereinabove stated, on perusal of the plaint , I am satisfied that there was no cause of action pleaded on the basis of which the plaintiff respondent had sought for the relief of ejectmet of the defendants petitioners. Moreover the issues as herein above reproduced does not show any issue framed in respect of ejectment of the defendants petitioners from the suit premises. In my considered opinion in such a situation the defendants petitioners had no cause to take the defence against their ejectment from the suit premises. The learned court below had wrongly applied its jurisdiction while passing the impugned judgment and decree and as such, the judgment and decree dated 2.7.2019 are liable to be set aside which I accordingly do and remand the appeal to the first appellate court for passing the judgment afresh after considering the observations made hereinabove. In view of the same this revision petition succeeds. Interim order if any, stands vacated.

JUDGE

Comparing Assistant