

13.08.2021
33
ns Ct.04

S.A. 352 of 2016

Sk. Qamruddin alias Sk. Md. Qamruddin & ors.
Vs.
Mst. Rehana Rashid & anr.

Mr. Saunak Bhattacharya, adv.
...for appellants

Mr. Bhattacharya, learned advocate appears on behalf of appellants, who are defendants in the suit for declaration and permanent injunction. He submits, husband of purported vendor had purchased the property in her name, for benefit of the family. Purported vendor was housewife and did not have source of income to have herself purchased the property and therefore had no power to sell it. The sale value of Rs.60,000/- is unreal because the property, at the time of sale, was valued at Rs.11 lakhs. These contentions were made in the written statement, but appropriate issues were not framed at trial. Lastly but not least, suit property is covered by Thika Tenancy laws.

We have perused the judgments. Trial Court framed following issues, reproduced below:-

- “Issues:-*
- 1. Is the suit maintainable?*
 - 2. Has the plaintiff any cause of action to file the suit?*

3. Is the plaintiff owner and occupier of the A scheduled property?

4. Is the plaintiff entitled to get a decree as prayed for?

Evidence on Record”

The issues were decided in favour of plaintiff. Lower appellate Court said:-

“I think it pertinent to note here that omission to frame issues may be regarded as an irregularity but it is not very much material one in the particular facts and circumstances of the case, wherein defendants made no counter claim. However, no specific issues are framed on the defence case but it is sufficient as all the controversies arising under the pleadings understood by the parties, and they have produced the evidence on such issues and the court while disposing of such issues considered the points for determination which arose out of such controversy. So, it can not be regarded as fatal one.”

We are satisfied that by the judgments, both Courts below expressed their opinion determining rights of the parties with regard to or all or any of the matters in controversy between them.

Regarding appellants’ contention of benami and under-valuation, trial Court found that the burden of

proof of benami transaction lay on defendants. They could not discharge the burden. Said Court did not have any evidence before it to show that husband of the vendor had purchased the property. Lower appellate Court while agreeing with the view said as follows:-

“As a matter of fact that Mst. Sakina Bibi was the original owner of the property and she had transferred the property in favour of her daughter Mst. Jaitun Bibi, mother of Jarina Khatun and said Jaitun Bibi transferred the property in question to Jahira Khatun, in the year 1963. Said Sk. Jalil died in the year 1999. He had never claimed the property, as of its owner, The property in question was/is Thika Tenancy property. Ultimately, said Jarina Khatun transferred the property to the plaintiff, her grand daughter.”

Here it will be useful to also reproduce another sentence from judgment of the lower appellate Court, which makes clear said Court’s finding regarding thika tenancy. The extract was relied upon by Mr. Bhattacharya and is reproduced below.

“In the year 1995 the West Bengal Thika Tenancy Act came into force. As a matter of the fact the suit property was never a Thika Tenancy property.”

In view of last preceding paragraph we are satisfied that there was appreciation of evidence in accordance with law regarding contention of benami. Furthermore, there is no reference to any documentary evidence that the suit property stood vested under Thika Tenancy laws on compensation paid to the vendor. Submission was that there is admission by oral evidence. We do not think on this count there can be formulated a question of law. Contention of under valuation was concurrently dealt with on finding that valuation of the sale deed was never under challenge, it being a registered document well within notice of all concerned.

We may add that though defendants can take contrary pleas but the plea of benami purchase by husband of the vendor and thika tenancy militate against each other. The contentions appear to have been correctly dealt with by the Courts below.

There is no merit in the appeal. SA 352 of 2016 is dismissed.

(Arindam Sinha, J.)

(Saugata Bhattacharyya, J.)