

18.11.2021
Ct. No.15
Sl. No.4
akd/tkm/koley

S.A.T. 88 of 2017 [via video conference]

Gopal Chandra Biswas

Vs

Joyeli Devi

Mr. Sounak Bhattacharya
Mr. Debanjan Das
Mr. Sounak Mondal

... .. for the appellant

The appeal is directed against the judgment and decree dated 23rd December, 2016 passed in Title Appeal No.25 of 2016 whereby the appellate court set aside the judgment and decree dated 31st May, 2016 and 16th June, 2016 passed by the learned Civil Judge (Junior Division), 2nd Court, Baruipur in Title Suit No. 102 of 2012 and declared the right, title and interest of the plaintiff-respondent in the suit property and restrained the appellant-defendant from interfering with the peaceful possession of the respondent-plaintiff in respect of the said property.

The respondent-plaintiff had filed a suit for declaration of the suit property described in 'Ka' schedule i.e. 10 chittaks of land out of three decimals of land in plot no. 1240 purchased by her from the appellant-defendant after payment of proper consideration. Since such purchase, the plaintiff-respondent was in possession of a house constructed on the suit property. The name of the plaintiff-respondent was mutated in the municipal records and he is paying municipal taxes in respect of the suit property. As the house was small, the plaintiff-respondent

subsequently purchased another property in the same village and started residing therein. The suit property however, remained in the possession of the plaintiff-respondent who visited the same of and on for regular maintenance and repairs.

It is further pleaded pursuant to an oral agreement for sale, the plaintiff-respondent had paid a sum of Rs.50,000/- as consideration for purchase of one cottah of land in plot No. 1119 adjacent to plot No. 1240. Upon payment of the consideration amount, plaintiff-respondent took over possession of the said plot also. However, no deed of transfer had been executed.

On 25th December, 2011, the appellant-defendant tried to forcibly dispossess her from the suit property. Initially, plaintiff-respondent filed a suit against the appellant-defendant being Title Suit No.24 of 2012 praying for partition of the suit property but subsequently when it came to her knowledge that she had purchased a demarcated portion of the land, the suit was withdrawn. Subsequently, the present suit seeking declaration and permanent injunction was filed.

The defendant-appellant while contesting the suit however, admitted the plaintiff-respondent was a tenant in his house. As he was in need of money, he had asked the plaintiff-respondent to lend Rs.50,000/-. The plaintiff-respondent agreed to do so on condition that the appellant-defendant executes a sale deed in respect of the suit property as security. Accordingly, on 26th December, 1984 the appellant-defendant executed a sale deed in favour of the plaintiff-respondent as security. The value of the suit property at the point of time was Rs.60,000/-.

The appellant-defendant has repaid the money in installments. The plaintiff-respondent surrendered the tenancy of the suit property and has delivered vacant possession of the same. Since the appellant-defendant is in possession of the suit property, the suit is not maintainable on this ground.

Plaintiff-respondent was examined as PW 1. In support of her claim of title and possession, the sale deed was exhibited as Exhibit 1. Municipal tax receipt in respect of the suit property was also exhibited as Exhibit 2 series.

Ignoring the aforesaid evidence on record, trial court held that the plaintiff-respondent during her deposition stated that she had filed the suit for recovery of suit property and no document of mutation before the BI&LRO has been filed as stated in the plaint. On such premise, the Trial Court concluded the plaintiff-respondent had failed to prove her title to the property. The court further proceeded to hold that the sale consideration was inadequate and the sale deed was, in fact, a security for loan advanced and not an outright sale. Thus, the Trial Court dismissed the suit. Plaintiff-respondent preferred an appeal before the lower appellate court against the dismissal of the suit.

Upon hearing the parties, the lower appellate Court came to the conclusion the findings of the trial court that the plaintiff-respondent had stated that she had filed the suit for recovery of possession and that she had not filed mutation records before the BI&LRO as claimed by her in the plaint are perverse. In addition thereto, the lower appellate court also held

that sale deed Ext. 1 cannot be construed as a security as no cogent evidence had been placed on record that a sale transaction was undervalued. Even so, on such premises alone, an unequivocal deed of sale could not be held as a security deed in view of the law declared in ***Swarnalata Tat vs. Chandi Charan De & Anr.***¹

Learned counsel for the defendant-appellant submits that the judgment is one of reversal. The lower appellate court had incorrectly interpreted the terms of the sale deed and failed to consider that the sale transaction was undervalued. Moreover, the lower appellate court failed to consider that the plaintiff-respondent had initially filed the suit for declaration and partition which was withdrawn. Plaintiff-respondent was out of possession and the suit for injunction was not permissible in law.

Having perused the plaint as well as evidence of P.W 1 we concur with the finding of the lower appellate court that the finding of the trial Court that the plaintiff-respondent had filed a suit for recovery of the suit property is wholly perverse. Pleadings in the suit as well as the evidence on record particularly that of PW 1 clearly show that she was in possession of the suit property. Moreover, the suit property had been mutated in the relevant municipal records in the name of the plaintiff-respondent and Exhibit 2 series were proved to establish her possession in the suit property. Lower appellate court correctly noted even defendant-appellant in his written

¹ AIR 1984 Cal 130

statement had claimed plaintiff-respondent was in the suit property but subsequently had vacated the same. No evidence, however, was placed on record by the defendant-appellant to show when the respondent had vacated the suit property. Having admitted the initial possession of the plaintiff-respondent in the suit property, the onus had shifted upon the defendant-appellant to show that the plaintiff-respondent had vacated the suit property and handed over possession to him. Lower appellate court rightly observed that he had singularly failed to discharge such onus. Hence, the finding of the lower appellate court that the plaintiff-respondent was in possession of the suit property and accordingly the suit was maintainable in law is unimpeachable.

With regard to the aspect whether sale deed (Exhibit 1) ought to be construed as a security deed, it is settled law of interpretation that nature of the deed is to be primarily inferred from the clear and unequivocal words used. Only in case of ambiguity in the instrument, surrounding circumstances may be looked into to determine the intention of the parties (see ***Pandit Chunchun Jha Vs. Sheikh Ebadat Ali And Another***²). We have perused the clear and unambiguous terms of the sale deed. There is no doubt in our mind the instrument depicts an outright sale of the suit property to plaintiff-respondent. Appellant/defendant sought to cast doubt on the sale deed by referring to certain discrepancies in the description of the property in the sketch map. He also pleaded that sale

² AIR 1954 SC 345

transaction was undervalued giving an impression that the sale deed in fact was a security to the loan advanced.

The Lower Appellate Court has dealt with the said issues at length. With regard to discrepancy, it held that such discrepancy was a minor one and that too, the recitals in the deed would prevail over its schedule vis-à-vis description of the suit property. On the score of under valuation, the Court held no contemporaneous evidence with regard to the actual market price of the suit property prevailing in the year 1984 had been placed on record. It held that the evidence of PW no. 1 in cross that the present price of the suit property is about 12 lakhs per cottah is of little relevance in assessing its value at the time of sale transaction in the year 1984.

We are in wholesome agreement with the aforesaid reasoning of the Lower Appellate Court. Discrepancy in the description of the suit property in the sale deed (Exhibit 1) is minor. Moreover, the description in the recitals of the deed tally with the suit property as described in the plaint. Hence, Exhibit 1 cannot be held to be a sham document. Trial Court held the sale consideration with regard to 10 chhattaks in plot no. 1240 is inadequate by comparing it with the sale price of Rs. 50,000/- paid with regard to purchase of 1 cottah of land in adjacent plot no. 1199. It is nobody's case that the said transaction took place in or around the same time. Furthermore, the said oral agreement did not fructify into execute of a sale deed and cannot be said to be a relevant indicator to come to a clear finding that the sale was under valued. Appellant-defendant has

not led any evidence with regard to the actual market price of this suit property. Even so, under valuation by itself cannot be a ground to hold that the unequivocal sale deed has to construe as a security deed as held in **Swarnalata Tat** (supra):-

“It cannot be laid down as a general principle that whenever there is a sale of property at a value lower than its worth it will lead to an irresistible inference that the transaction is in substance a loan. A price below the true value by itself cannot indicate a mortgage nor a fair a market value can be the conclusive evidence that the transaction is a sale.”

Hence, we are of the opinion that the findings of the Trial Court being wholly perverse and contrary to law were rightly set aside by the Lower Appellate Court on sound legal principles.

Thus, no substantial question of law arises in the present case justifying admission of the appeal.

The Appeal is, thus, dismissed.

There shall be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)