

12.04.2023
SL No.10
Court No.8
(gc)

SAT 156 of 2015

Manik Chandra Pathak

Vs.

Laxmi Mula

The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. The appeal is of the year 2015. The matter initially appeared in the Warning List on 6th March, 2023 and thereafter transferred to the Regular List on 21st March, 2023. Since then the matter is appearing in the list. The appellant has due notice about the listing of the matter.

It appears from the report of the Stamp Reporter dated 16.04.2015 that the appeal was preferred with defects. Till date, the defects have not been removed. We could have dismissed this second appeal for non-removal of defects. However, we have read the judgment of the Trial Court as well as the First Appellate Court and the grounds of appeal in order to find out whether the second appeal involves any substantial question of law.

The second appeal is arising out of the judgment and decree dated 16th September, 2014 passed by the First Appellate Court affirming the judgment and decree of the Trial Court dated 30th August, 2008 in a suit for declaration of title with consequential reliefs of permanent injunction and for recovery of possession with a prayer for

damages. The suit was dismissed as the plaintiff had failed to prove his absolute ownership in the suit property. The plaintiff alleged that previously the suit premises made up of "Chhitabera" and the plaintiff used to carry on business from father taking consent of the absolute owner, the mother of the defendant constructed the suit premises out of his own fund and raised a pucca brick built structure with tin shade. During the pendency of the suit, he was forcibly evicted from the suit premises. The plaintiff in this regard relied upon an agreement which was marked as Exhibit-1 along with few rent receipts to show that Nityabala, the predecessor of the defendant inducted the plaintiff in the suit premises as monthly tenant. The plaintiff, however, admits that Nityabala was not the absolute owner of the suit premises. It was the contention of the appellant that if it is proved that mother of the defendant executed the said agreement with the plaintiff then it has to be presumed that the plaintiff was a monthly tenant in respect of the suit premises. The defendant, however, had categorically denied execution of such agreement by her mother nor she admitted that her mother inducted the plaintiff in the suit premises as a tenant. The plaintiff during his cross-examination has admitted that he had no other document excepting the agreement of the few rent receipts to show that he has inducted as a tenant. On perusal of the Exhibit-1, the Trial Court found that the scribe on the foot

of the said agreement categorically mentioned that he had prepared the agreement on perusal of the draft prepared by an Advocate. She was a pardanasin lady. Accordingly, the Trial Court relying upon the decision of the Hon'ble Supreme Court in AIR 1963 SC 1203 held that the burden lies on the plaintiff to establish that the said document was executed by Nityabala with full knowledge of the contents of the said documents. The learned Trial Judge has also relied upon various authorities on the subject and held that the plaintiff has failed to establish that the deed was executed by Nityabala out of her free and independent will. Nityabala was illiterate. The deed also does not show that the contents of the said deed was read over and explained to Nityabala before she put her signature.

On such consideration, the learned Trial Judge declined to rely on the said deed and few rent receipts alleged to have been signed by Nityabala in proof of monthly tenancy. The Trial Court has also noticed glaring discrepancy in the signature of Banchurani Gharui on the several rent receipts alleged to have been signed by her and declined to accept the said receipts to be genuine. The relevant findings are:-

“Moreover, on perusal of the receipts alleged to have been executed by one of the sisters of defendant, namely Banchurani Gharui it is found that these receipts also issued in one sitting though different dates are mentioned and comparing with

the said signature lying in the said receipts with the admitted signature of Banchurani Gharui with Exbt. D through which the Banchurani Gharui and Bharati Rani Jana transferred their share in the suit property in favour of the defendant. It appears that the Banchurani Gharui cannot sign properly her name also, whereas in the receipts the names of Banchurani Gharui are lying signed with such a smoothness and rhymes, having sufficient efficiency in writing. An on bare eye every person can say that the signatures lying in the receipts alleged to have been executed by Bachurani Gharui are not the signature of the same person lying with the Exbt.D through which Bachurani Gharui sold her share in the suit property in favour of the defendant. So, no reliance can be given upon the documents filed by the plaintiff relating to his tenancy. No witness also produced by the plaintiff regarding issuance of receipt by Smt. Bachurani Gharui.”

The suit was filed on 19th March, 2001 and on 30th November, 2005 the plaint was amended to incorporate a pleading that on 19th October, 2001, the plaintiff was dispossessed from the suit property. On 21st October, 2001 a commission was held but during commission no person on behalf of the plaintiff was present. The Trial Judge found that it was unusual for the plaintiff not to be present at the time of inspection when he alleged that he was dispossessed on 19th October, 2001 as a man of prudence would try to ensure that his right is protected and he could assist the Commissioner in filing a proper report. He also did not make any endeavour to have the

suit property inspected through any local inspection or commission to show that he was ever in possession of the suit property. The possession of the defendant in the suit property, however, is established. The plaintiff could not produce any evidence to show that he was carrying on his business from the suit property.

On such consideration, the Trial Court dismissed the suit. The First Appellate Court in affirming the judgment made the following observation with regard to the Exhibit-1 and the evidence in this regard:-

“Now coming to the said agreement being Exbt.1 the appellant/plaintiff has failed to prove the said agreement as because the deed filed by the respondent/defendant bears the signatures of Nityabala Khan but the agreement produced by the plaintiff bears the L.T.I. of Nityabala Khan as such there is contradiction with regard to the signature of the mother of the respondent. Moreover, the lady Nityabala Khan being an illiterate lady also raises presumption against the execution of the agreement between Nityabala Khan and the appellant/plaintiff. The said agreement also does not bear any endorsement to the effect that the said agreement was read over and explained to Nityabala Khan and thereafter she had put her L.T.I. The appellant/plaintiff has failed to adduce any documentary as well as any oral evidence to the effect that the said agreement was executed by the Nityabala Khan in true sense of executing the same. Lastly, the appellant/plaintiff has adduced evidence that he purchased the stamp paper of Rs.10/- whereas the agreement exhibited has been containing stamp of Rs.5/- apart from this there is discrepancy regarding the date of purchase of the stamp. The appellant/plaintiff has failed to lead any evidence as regard the date hearing att he back

of the stamp papers to be in English date or Bengali date. If the date containing therein is taken to be English date then the agreement becomes a totally false document as because 13.5.1986 will be in the year 1393 B.S. as per Bengali Calendar which is much after the death of Nityabala Khan and if it is presumed that it is a Bengali date then the stamps was purchased about 7 months earlier from the date of execution as such this contradictions which raises adverse presumption against the originality of the said agreement.

The appellant/plaintiff has also taken the ground that he was in possession on the date of filing this suit and subsequently the respondent/defendant forcefully evicted the plaintiff. In order to prove the possession the first and foremost requirement is for appointment of Advocate Commissioner for locale inspection but in this case the appellant/plaintiff has not made any application to the effect that an Advocate commissioner should be appointed to bring the through facts regarding possession of the suit room by the appellant/plaintiff before the Court nor the appellant/plaintiff has filed any document to prove that he was in possession of the suit room and was doing his business from the suit room. On the contrary, the respondent/defendant has made an application for appointment of the Advocate Commissioner who has filed the report from where it transpires that the respondent/defendant is in possession of the suit room and using the same as tea stall and the appellant/plaintiff has not raised any objection against the said report before the Lower Court as such the appellant by not challenging the said report has accepted the possession of the respondent/defendant in respect of the suit room. The allegation that the appellant/plaintiff had been forcefully evicted from the suit premises also raises doubt as because the application for amendment reflects the date for forceful eviction on 19.10.2001 and the date of making the

application reflects to be on 30.11.05 which is almost after four years from the date of forceful eviction. The appellant/plaintiff have failed to lead any iota of evidence to explain the delay of four years from bringing these facts of eviction before the learned Court. Apart from this the appellant/plaintiff had also the liberty to file a suit under Section 6 Specific Relief Act against the forceful eviction but the appellant/plaintiff choose to keep quiet for almost four long years and even the appellant/plaintiff has failed to substantiate the fact that the respondent/defendant has committed theft of his valuable worth Rs.25,000/- as the plaintiff/appellant has failed to file any list of documents and or the charge sheet from where it transpires that the defendant/respondent has committed the said offence after forcefully evicting the appellant/plaintiff as such the allegation of forceful eviction and looting of property also cannot be substantiated by the appellant/plaintiff.

As such I find that the appellant/plaintiff has failed to substantiate his case as per his plaint as because the burden of proving the case is on the plaintiff/appellant and the same cannot be shifted to the defendant/respondent by any means.

I would not like to make any judgment lengthy as I find no reason to interfere with the judgment and decree passed by the lower Court. As a result, the present appeal is liable to be dismissed.”

The Appellate Court on proper appreciation of the evidence concurred with the findings of the learned Trial Court. The concurrent findings of facts on the basis of the evidence on record does not call for any interference as we are of the view that the conclusion arrived at by the Trial Court and the First Appellate Court are absolute view. It does not involve any substantial question of law.

The second appeal, accordingly, stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)