

GAHC010219042012



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

Case No. : RSA/35/2012

M/S GAUHATI ROLLER FLOUR MILLS LTD.,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING
ITS REGISTERED OFFICE AT DISPUR, GUWAHATI-781005 ASSAM,
REPRESENTED BY ITS DIRECTOR AND CONSTITUTED ATTORNEY, SRI
PAWAN KUMAR BAGRI

VERSUS

SMTI PREMODA MEDHI and 2 ORS,
W/O LATE GHANAKANTA MEDHI, R/O RAJGARH ROAD, GUWAHATI,
ASSAM, C/O OASIS RESTAURANT, G.S.ROAD, GUWAHATI, ASSAM.

2:RAJIB KR. MEDHI

S/O LATE GHANAKANTA MEDHI
R/O RAJGARH ROAD
GUWAHATI
ASSAM
NOW WORKING IN THE OFFICE OF THE ANTI DRUGS AND PROHIBITION
COUNCIL
GUWAHATI
C/O OASIS RESTAURANT
G.S.ROAD
GUWAHATI
ASSAM.

3:SANJIB KR. MEDHI

S/O LATE GHANAKANTA MEDHI
R/O DULIAJAN
NOW WORKING IN THE OIL INDIA LTD.
DULIAJAN

DIST. TINSUKIA
ASSAM

Advocate for the Petitioner : MR.H K DEKA

Advocate for the Respondent : MR.K N CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 15-02-2022

Heard Mr. H. Deka, learned Sr. counsel, assisted by Mr. B. Deka, Advocate appearing for the appellant as well as Mr. K. N. Choudhury, learned senior counsel representing the respondents.

2. This is a regular second appeal under Section 100 of the Code of Civil Procedure whereby the judgment and decree dated 03.08.2010 passed by the Civil Judge No. 3, Kamrup (M), Guwahati in Title Appeal No. 37/2007 upholding the judgment and decree dated 23.09.2005 passed by Civil Judge (Junior Division No. 2), Kamrup, Guwahati in Title Suit No. 230/2002 is under challenge.

3. Case of the appellant:- the appellant is a private limited company incorporated under the provisions of The Companies Act, 1956. Shri Shankar Lal Bagri is a Director and the constituted attorney of the appellant company.

4. The respondents are the legal heirs of late Ghana Kanta Medhi.

5. On execution of a registered sale deed, On 05.03.1971, the appellant purchased a plot of land measuring 1 bigha 3 kathas and 15 lechas covered by Dag Nos. 708 and 710 and Patta No. 2 and Dag No. 953, Patta No. 288 of village Japarigog under Beltola mouza within the jurisdiction of Guwahati Circle Office in the district of Kamrup, from Ramesh Kumar Bowri (minor), who acted through his father Shri Jagannath Bowri.

6. On the Western boundary of the said land the respondents have their land, when they have been running a restaurant called 'Oasis Restaurant'.

7. The appellant pleaded that on one occasion the respondents raised some temporary thatched shed over a portion of land of the appellant. The said portion of the land measures 72 ft x 30 ft (suit land). The respondents told the appellant that the aforesaid restaurant had received a big food supply order and, therefore, they needed extra space for that purpose. The respondents undertook to remove those structures after finishing the job.

8. On 08.06.2002, the respondent no. 2, in association with some other persons, attempted to raise a pucca wall on the South-West side of the suit land. In a similar manner, again on 10.06.2002, the respondent no. 2 started to construct the boundary wall.

9. Aggrieved by the acts of the respondents, the appellant approached the Sub Divisional Magistrate, Guwahati and filed a proceeding under Section 144 of the Code of Criminal Procedure. The learned Magistrate passed an order in favour of the appellant but subsequently this Court was pleased to set aside the said order.

10. Finally, the plaintiff filed a suit praying for declaration of its right, title and interest over the suit land and for recovery of possession of the same by evicting the respondents.

11. Case of the respondents: the respondents specifically denied that the appellant had purchased a plot of land measuring 1 bigha 3 kathas and 15 lechas of land on 05.03.1971 from Ramesh Kumar Bowri on 05.03.1971.

12. The respondents pleaded that they are the actual owners of the suit land and that is why, in the year 1985, they had constructed an Assam Type House there. They further pleaded that the appellant is well aware of those facts but never raised any objection at that time. According to the respondents, the Oasis Restaurant is situated on the suit land and in the year 1994 it was leased to a person called Shri Akhil Choudhury on payment of rent.

13. The respondents claimed that the appellant has staked claim over the suit land at a belated stage for illegal gain and wrongful bargain.

14. Regarding the allegation that on 10.06.2002 the respondents tried to construct a boundary wall, they have stated that a boundary wall already existed on all sides except an area of 10 ft on North South direction abutting the G.S. Road.

15. The respondents claimed that on 12.03.1979 their predecessor late Ghana Kanta Medhi had purchased the suit land from Ms. Hamida Nessa by executing a registered sale deed. Revenue records were accordingly corrected.

16. On the basis of the pleadings of both sides, the learned trial court framed the following issues:

- (i) Whether the suit is maintainable?
- (ii) Whether the suit is properly valued?
- (iii) Whether the plaintiff has right, title and interest over the suit land vide registered Sale Deed No. 2159 dated 05.03.1971? (sic.)
- (iv) Whether the plaintiffs are entitled to the reliefs as claimed for?
- (v) To what other relief/reliefs the plaintiffs are entitled to?

(17) During the trial of the case, the appellant examined 2 (two) witnesses and the respondents examined only 1 (one) witness.

(18) Ultimately, the trial Court dismissed the suit of the appellant.

(19) The learned first appellate court agreed with the decision of the trial court and dismissed the appeal.

(20) The substantial questions of law formulated by this Court are as follows:

- (i) Whether the finding of the courts below are perverse in view of the admitted documentary evidence under Ext. 1 and Exts. A and B?
- (ii) Whether the courts below erred in law in not complying with the legal requirement of Order 26 Rule 9 of the Civil Procedure code to appoint a

Commission for local investigation to enable the Court to properly and correctly understand and assess the evidence on record already recorded in the light of the peculiar facts of this case?

- (iii) Whether rejection of the application for adducing further evidence without considering the provision of Section 107 (1) (d) read with Order 41 Rule 27 of the Civil Procedure Code vitiates the impugned judgment?

(21) I have heard the learned counsels for both sides at length.

(22) The appellant's witness (PW-1) exhibited the Sale Deed dated 05.03.1971 as Ext. 1. It is a hand written document. The writer of the document was not examined by the appellant.

(23) The appellant examined another witness named Kishor Sarma (PW-2), who is an employee of the appellant company.

(24) Therefore, it is clear on the face of the record that the Ext.1, the Sale deed on the basis of which the appellant claims title over the suit land, has not been proved according to the procedure laid down in Section 67 of the Indian Evidence Act.

(25) Section 67 of the Indian Evidence Act reads as under—

“ 67. Proof of signature and handwriting of person alleged to have signed or written document produced.—If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.”

(26) Where a document is written by one person and signed by another, the handwriting of the former and the signature of the latter both have to be proved in view of Section 67 of the Evidence Act . When the sale deed(Ext 1), by which the appellant claimed to have title over the suit land is not proved, then the title of the appellant over the suit land is not proved. Therefore, it is proved that the appellant never had title over the suit land.

(27) Now at this stage, Section 100 of the Code of Civil Procedure is relevant. It reads as follows:

"100. Second appeal.-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question."

(28) Though Section 100 CPC deals with the High Court's power in second appeal, it has the effect of declaring that the first appellate court is the final court on facts and the High Court in a second appeal cannot reappraise evidence or facts unless the case involves a substantial question of law. Section 100 CPC was amended in 1976 and thereby drastic restriction was imposed on the High Court's jurisdiction in entertaining a second appeal. Even prior to the 1976 amendment, the first appellate court was treated as the final court of facts.

(29) What constitutes a substantial question of law in a second appeal? In *Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.*, reported in AIR 1962 SC 1314, the Apex Court held as under:

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is

palpably absurd the question would not be a substantial question of law.”

(30) Thereafter in *G. Mahalingappa v. G.M. Savitha*, (2005) 6 SCC 441, it is held as under--

“25. Let us now consider whether the concurrent findings of fact could be set aside by the High Court in the second appeal. It is well settled by diverse decisions of this Court that the High Court in the second appeal is entitled to interfere with the concurrent findings of fact if the said concurrent findings of fact are based on non-consideration of an important piece of evidence in the nature of admission of one of the party to the suit, which is overlooked by the two courts below. (See *Deva v. Sajjan Kumar* [(2003) 7 SCC 481] .) It is equally well settled that under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the concurrent findings of facts of the courts below without insufficient and just reasons. (See *Sayeda Akhtar v. Abdul Ahad* [(2003) 7 SCC 52] .) In the second appeal, the High Court is also not entitled to set aside the concurrent findings of fact by giving its own findings contrary to the evidence on record. (See *Saraswathi v. S. Ganapathy* [(2001) 4 SCC 694].)”

31. In the case in hand, the appellant failed to prove his sale deed and the suit was dismissed. The appellate court agreed with the trial court. Therefore, being the second appellate court, this court has decided to agree with the factual findings of the courts below.

32. Under the aforesaid premised reasons, this court is of the opinion that the appellant failed to prove his right, title and interest over the suit land. In such a circumstance, the courts below were correct while they did not go for issuing a commission for local investigation under Order 26 Rule 9 of the CPC.

33. In a civil suit, the plaintiff has to prove his case on his own strength. He cannot draw strength from the documents of the other side. The appellant (plaintiff before the court below) failed to prove the sale deed, so he failed to prove his title over the suit land.

34. For the reasons as aforesaid, this court finds that the trial court as well as the first appellate court had correctly appreciated the evidence on record and arrived at correct findings. Therefore, this appeal is found to be devoid of merit and stands dismissed accordingly.

35. Send back the LCR.

Comparing Assistant