

(2007) 06 GAU CK 0005

Gauhati High Court

Case No: None

Sonfulia Chandik

APPELLANT

Vs

Chaturbhuj Gupta and Others

RESPONDENT

Date of Decision: June 19, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 89

Citation: (2007) 3 GLT 883

Hon'ble Judges: T. Nanda Kumar Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

T. Nanda Kumar Singh, J.

This second appeal is directed against the judgment and decree dated 26.5.2000 passed by the learned District Judge, Nagaon in Title Appeal No. 4 of 1999 allowing the appeal by reversing the judgment and decree passed on 1.4.1999 in the Title Suit No. 29 of 1990 by the Civil Judge (Senior Division). The present appellant is the plaintiff No. 2 in Title Suit No. 29 of 1990 of the Court of Civil Judge (Senior Division), Nagaon. The present appeal was admitted for hearing on the four (4) substantial questions of law, one of which being substantial question No. 4 is quoted below:

4) Whether the possession of land on the basis of the admitted invalid document is ipso facto sufficient to categorize the possession as adverse against the vendor as well as the whole world, and if so, in the circumstances of the case, the learned lower appellate court was legally entitled to insist for adducing separate oral evidence for determination of adverse possession over the land, and if not, whether the approach made by the learned lower appellate court for the purpose of reversing the decision of the trial court is in accordance with law, and if not, whether the impugned judgment and decree of the learned lower appellate court are liable to be reversed in Second Appeal?

2. Heard Mr. G.C. Phukan, learned Counsel appearing for the appellant/plaintiff and Mr. G.P. Bhowmik, learned Counsel appearing for the respondents-defendants.

3. The brief facts of the appellant/plaintiff's case are that the suit land measuring 21 bighas 2 kathas and 13 lechas covered by Dag Nos. 332, 333, 334 and 337 of periodic patta No. 97 at Kuthari Gaon under Dwarbagari Mouza described in Schedule "A" of the plaint originally belonged to one Kalpanath Mahanta. The suit land as per settlement in the year 1930-1931 was covered by Dag Nos. 99, 102, 103 and 104 of periodic patta No. 7.

4. On the death of Kalpanath Mahanta, his two sons namely Shri Dewkan Mahanta and Shri Phanidhar Mahanta inherited the suit land. On 15.7.1942 both Shri Dewkan Mahanta and Phanidhar Mahanta sold the suit land under a registered sale deed dated 15.7.1942 to one Shri Lachan Ram Teli and delivered the possession thereof to Shri Lachan Ram Teli. The name of Shri Lachan Ram Teli was also mutated in the patta of the suit land. On 9.6.1948, the said Shri Lachan Ram Teli sold the suit land to Dhanu Tanti by executing an unregistered deed for a consideration amount of Rs. 500/-. On 2.7.1949, the name of Shri Dhanu Tanti was also mutated in the revenue record of the suit land under a mutation order dated 2.7.1949 passed in Mutation Case No. 732/1948-49 (Samaguri Circle) and as such Shri Dhanu Tanti became the owner in possession of the suit land and he was also paying the land revenue thereof.

5. On 18.12.1964, the said Shri Lachan Ram Teli died leaving behind six sons namely, (1) Shri Krishna Prasad Gupta (defendant No. 1) (2) Kedaraath Gupta (3) Shri Badrinath Gupta (defendant No. 12), (4) Dudhnath Gupta, (5) Ramananda Gupta (defendant No. 12) and (6) Ramprasad Gupta. Kedarnath Gupta also died leaving behind his son defendant No.2 Shri Laxmanlal Gupta. Shri Dudhnath Gupta also died leaving behind his five (5) sons and his wife i.e. defendant No. 3 to 8. Shri Ram Prasad Gupta also died leaving behind his sons i.e. defendant No. 9 to 11. During the re-settlement operation, the sons of Shri Lachan Ram Teli got their names mutated in the suit land by right of inherited on 24.2.1966. On 28.4.1966 Dhanu Tanti lodged an objection against the mutation of the names of the sons of Shri Lachan Ram Teli in the revenue record of the suit land before the Assistant Settlement Officer, Koliabor and got his name restored in the revenue record of the suit land on 28.4.1966. The defendants filed the Misc. Case No. 239/67-68 before the Assistant Settlement Officer, Koliabor. The Assistant Settlement Officer, after an enquiry, forwarded the said Misc. Case to the Settlement Officer at Nagaon. Later on, the Settlement Officer passed an order on 9.7.1968 for removal of the name of Shri Dhanu Tanti and remanded the case for re trial. Shri Dhanu Tanti also instituted a fresh case being Mutation Case No. 5 of 1971 before the Assistant Settlement Officer. Both the said Misc. Case and the Mutation Case were disposed of by the Assistant Settlement Officer on 29.4.1975 by granting mutation in favour of the defendants.

6. Against the said order of the Settlement Officer dated 29.4.1975, Shri Dhanu Tanti preferred the mutation appeal being Mutation Appeal No. 53/74-75 before the Additional Deputy Commissioner at Nagaon. The Additional Deputy Commissioner allowed the appeal on 3.8.1976 and re-entered the name of Dhanu Tanti in the patta of the suit land. The defendants preferred an appeal being No. 152/RA/76 before the Assam Board of Revenue at Guwahati against the said order of the Additional Deputy Commissioner dated 3.8.1976 passed in Mutation Appeal No. 53/ 74-75. During the pendency of the appeal before the Revenue Board, Dhanu Tanti sold the suit land in favour of the plaintiff No. 2 Smti. Sonfulia Chandik (appellant herein) by executing two registered sale deeds dated 2.1.1975 and 9.5.1975 and also by executing the rectification registered deed dated 9.5.1975. Dhanu Tanti also delivered the possession of the suit land to the plaintiff No. 2 Smti. Sonfulia Chandik and since then she has been in possession of the suit land. The plaintiff No. 2 Smti. Sonfulia Chandik had also got her name mutated in the patta of the suit land and impleaded herself as respondent No. 2 in the said appeal before the Assam Revenue Board.

7. Dhanu Tanti died on 5.8.1978 leaving behind his wife Smti. Bishaka Tanti i.e. plaintiff No. 1 and Bishaka Tanti stepped into the said appeal before the Board of Revenue as respondent No. 1. The Board of Revenue allowed the said appeal on 30.7.1979 and the names of Dhanu Tanti and the plaintiff No. 2, Smti. Sonfulia Chandik were struck out of the suit patta. The plaintiff No. 1 Smti Bishaka Tanti filed the writ petition being Civil Rule No. 313 of 1979 before this Court assailing the said order of the Board of Revenue dated 30.7.1979. This Court had disposed of Civil Rule No. 313 of 1979 on 1.7.1988 wherein and where under this Court held that "as respective title we make it clear that Civil Court shall determine the question of title of the suit land untrammelled by the decision of the Board of Revenue." Hence the plaintiff No. 1 and 2 filed the Title Suit No. 29 of 1990 for declaration that Dhanu Tanti acquired a good and saleable title in the suit land and the plaintiff No. 2, Smti. Sonfulia Chandik (appellant herein) having purchased the suit land from him also had acquired a perfect title over the suit land.

8. In para No. 10 of the plaint in the Title Suit No. 29 of 1990, the plaintiff pleaded that if it is assumed that the sale by the said Lachan Ram Teli in favour of Dhanu Tanti was invalid on the ground of its being unregistered, there was strong evidence to show that Shri Dhanu Tanti had been in adverse possession of the suit land above the prescriptive period of 12 years and thus he became the absolute owner. The plaintiff also pleaded that as Dhanu Tanti had acquired title over the suit land by possessing the suit land as adverse against Shri Lachan Ram Teli for more than prescriptive period of 12 years he had the right to sell the suit land, and also that the plaintiff No. 2 Smti. Sonfulia Chandik had purchased the suit land from Dhanu Tanti under the registered sale deeds mentioned above.

9. The defendants also contested the suit by filing written statement and counter claim separately. In the written statement the defendants pleaded that there is no cause of action for the suit, suit is not maintainable in the present form and also that suit is barred by waiver, estoppel, acquiescence and the limitation and also that the suit is barred by Section 154 of the Assam Land and Revenue Regulation. The defendants also in their written statement denied the entire case of the plaintiff. Further, they also pleaded that after the death of Lachan Ram Teli, they got their names mutated in the patta of the suit land. The defendants also pleaded that Dhanu Tanti had no right to sell the suit land and Dhanu Tanti was not the owner of the suit land and also that Dhanu Tanti was never been in possession of the suit land and he never sold and delivered the possession of the suit land to the plaintiff No. 2 Smti. Sonfulia Chandik.

10. The trial court framed the six (6) issues:

1. Is there any cause of action for the suit?
2. Is the suit maintainable in its present form?
3. Whether the suit is barred by waiver, estoppels acquiescence and limitation.
4. Whether the plaint is barred by u/s 154 of the Assam Land Revenue Regulation Act.
5. Whether the plaintiffs have acquired any right, title and interest over the suit land.
6. To what relief, if any, is the plaintiffs entitled?

11. The trial Court framed the following additional issues on the counter claim.

1. Whether there is cause of action for the counter claim?
2. Whether the counter claim is time barred or is tenable under the law?
3. Whether the defendants have any right, title and interest over the suit land?
4. To what relief (s), if any, the plaintiffs are entitled?

12. The plaintiffs examined six (6) PWs namely--PW-1 Sonfulia Chandik, PW-2, Bothra Sahu, PW-3, Deban Phukan, PW-4, Haradhan Ghatowat, PW-5, Krishna Singh and PW-6, Sankar Bhuyan. The plaintiffs exhibited eight (8) documents i.e., Ext. 1, Certified copy of Jamabondi. Ext. 2, Certified copy of Jamabondi, Ext. 3, Certified copy of order passed by the Hon'ble Gauhati High Court in Civil Rule No. 313/79, Ext. 4, certified copy of order dated 30.7.1979 passed by the Board of Revenue in Case No. 152 RA/76, Ext. 5, Certified copy of order dated 3.8.1976 passed by ADC in Mutation Appeal-No. 53/74-75, Ext. 6, Certified copy of Registered Sale Deed dated 2.1.1975 for 9 Bigha 4 Katha 14 Lechas of land, Ext. 7, Certified copy of Rectification dated 9.5.1975 and Ext. 8, certified copy of Registered Sale deed Deed dated 9.5.1975 for 11 Bighas 2 Kathas 9 Lechas of land. In support of their cases defendants also

examined three (3) DWs namely--DW-1, Charturbhuj Gupta, DW-2, Ramsing Rantia and DW-3 Chotobati and exhibited four (4) documents namely--Ext. Ka, Certified copy of Jamabondi, Ext. kha, Certified copy of order passed by ASO in Misc. Case No. 239/67-68, Ext. Ga, Certified copy of judgment in C.M. No. 44(N-3) 77 passed by the Sessions Judge, Nagaon and Ext. Gha, Revenue Receipts.

13. Without framing the issue as to whether Dhanu Tanti had been in possession of the suit land as owner thereof openly and adverse to the vendor Lachon Ram Teli and against all for more than the prescriptive period of 12 years and if so, he acquired the title over the suit land by prescription before he sold the suit land to the plaintiff No. 2 Smti. Sonfulia Chandik (respondent herein) under the said registered sale deeds", the trial Court by the judgment dated 1.4.1999 while deciding the issue No. 5 i.e. whether the plaintiffs have acquired any right, title and interest over the suit land and the additional issue No. 3 whether the defendants have any right, title interest over the suit land held that Dhanu Tanti possessed the suit land as real owner and since 2.7.1949 the date of his possession of the suit land he possessed the suit land adversely against the interest of all others and therefore by adverse possession of the suit land for more than 12 years, Dhanu Tanti acquired right, title, interest and possession over the suit land. After such finding, the learned trial Court had decided the issue No. 5 and additional issue No. 3 that the preponderance of evidence is, therefore, valid transfer of the suit land from Dhanu Tanti to plaintiff Sonfulia Chandik. As such, plaintiff Sonfulia Chandik has acquired right, title, interest and possession in the suit land. On the contrary, defendants have failed to prove by adducing evidence that they acquired right, title and interest in the suit land by their right of inheritance from their predecessor-in-interest, Lachan Ram Teli. Therefore, issue No. 5 and additional Issue No. 3 are decided in favour of the plaintiff. After such finding the learned trial Court by passing the judgment and decree dated 1.4.1999 decreed the Title Suit No. 29 of 1990 in favour of the plaintiffs.

14. Being aggrieved by the judgment and decree of the trial Court dated 1.4.1999 decreeing the Title Suit No. 29 of 1990 in favour of the plaintiff, the defendants preferred Title Appeal No. 4 of 1999 before the 1st appellate Court i.e. Court of District Judge, Nagaon, Assam. The 1st appellate Court also again without framing proper issues had decided that the plaintiff had absolutely failed to prove any case of adverse possession of the suit land and after such finding the learned 1st appellate Court allowed the appeal by passing the impugned judgment and decree dated 26.5.2000 by reversing the judgment and decree dated 1.4.1999 passed by the learned trial Court decreeing the Title Suit No. 29 of 1990. Hence the present second appeal which had been admitted for hearing on the four substantial questions of law, one of which is quoted above.

15. At the time of hearing of the second appeal, the argument of both the counsels i.e. learned Counsel appearing for the appellant as well as learned Counsel

appearing for the respondents had confined to only one issue as to whether the plaintiff (appellant herein) could prove the adverse possession of the suit land by Dhanu Tanti from whom the plaintiff had purchased the suit land under the said registered sale deeds and as such it appears that both the parties knew each other their respective cases in the Title Suit No. 29 of 1990. It is also the fact that there is no issue regarding the adverse possession of the suit land framed by the trial Court in the Title Suit No. 29 of 1990.

16. The learned trial Court is duty bound, rather mandatory to follow the requirements of Orders 10, 11, 12 and 14 of the CPC at the initiation of the hearing of the Title Suit No. 29 of 1990. The duty of raising issues always rest on the Court and it is not permissible to presume that a fact which ought to have been put in issue, but which was not so put up and the burden to prove which was on one party, is admitted by other party because it was not put in the issues. Reference may be made to *Manipur State Bank Ltd. v. Nathmal Mehata* reported in AIR 1958 Manipur 22. The object of framing issues, is to direct that the attention of the parties to the main question of fact necessary to be decided and it is difficult to see how this can be achieved or how the duty of raising the issues which had been laid down under the law on the court can be discharged, if the pleadings are vague or do not give the necessary details. The learned Judicial Commissioner in *B.K. Ghosh v. R.K. Joysurendra Singh* reported in AIR 1959 Gau 27 held that the framing of issues is a very important part in the trial of a suit. In fact by framing the issues the Court announced its decision that the result of the suit depend on those points only and the party would be debarred from adducing evidence from any other point or points.

17. The Apex Court in [Makhan Lal Bangal Vs. Manas Bhunia and Others](#), held that an obligation is cast on the Court to read the plaint and written statement/counter claim, if any and then determine with the assistance of the learned Counsel for the parties, the material proposition of facts or law on which the parties are at variance. The issue shall be framed and recorded on which decision of the case shall depend and the parties and their counsels are bound to assist the Court in the process of framing issues. The duty of the counsel does not belittle the preliminary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to framing sufficiently excessive issues. An omission to frame proper issues may a ground for remanding the case for the trial subject to prejudice having been shown to have resulted by the omission. The Apex Court in *Makhan Lal Bangal* (supra) further held that stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial shall proceed excluding divert and the departure therefrom the real dispute between the parties determined and conflict is narrowed and concave mirror held by the Court reflecting the pleading of the party pin point of the issue dispute on which the two sides differs. The correct decision of the civil lies lastly depend on correct framing of issues, correctly determining the real point in controversy which need to be decided.

17.1. The Apex Court in [Ram Sarup Gupta \(Dead\) by Lrs. Vs. Bishun Narain Inter College and Others](#), had discussed the object and purpose of pleading and also the duties of the court to find out whether in substance the party knew the case the issue upon which they went to trial.

17.2. The relevant portion of para 6 of Ram Sarup Gupta v. Bishun Narain Inter College (supra) reads as follows:

6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal-In [Bhagwati Prasad Vs. Shri Chandramaul](#), a Constitution Bench of this Court considering this question observed (at p. 738 of AIR).

If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is did the

parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence. would introduce considerations of prejudice and in doing justice to one party, the Court cannot do injustice to another.

The corollary of the judgment in Ram Sarup Gupta (supra) are that it is the duty of the Court to find out the issues upon which parties went to trial and also as to whether in subsistence the party knew the case. In spite of deficiency in the pleading, the pleading should receive a liberal construction and no pedantic approach should be adopted to defeat justice on hair splitting technicalities.

18. From the above discussed, this Court is of the considered view that the trial Court had utterly failed to discharge his duty, rather mandatory, contemplated in Orders 10, 11, 12 and 14 of the CPC in the course of the trial of the Title Suit No. 29 of 1990 and also the 1st appellate Court failed to discharge his corresponding duties as a 1st appellate court to frame the proper issues which would be the core question to be decided in the Title Suit No. 29 of 1990. In the absence of framing proper issues there could not be proper adjudication of the case of the parties in the interest of justice and equity. As discussed above, the judgment of the trial Court dated 1.4.1999 in Title Suit No. 29 of 1990 and also the impugned judgment and decree dated 26.5.2000 in Title Appeal No. 4 of 1999 without framing proper issues are required to be set aside and accordingly set aside.

19. Now the question is the issue whether Shri Dhanu Tanti had acquired right and title over the suit land by prescription by adversely possessing the suit land as owner thereof openly against all including the vendor Shri Lachon Ram Teli for more than the prescriptive period of 12 years at the time of the execution of the two registered sale deeds viz. dated 2.1.1975 and 9.5.1975 and one rectification dated 9.5.1975 under which he transferred the suit land to the plaintiff No. 2 Smti Sonfulia Chandik and if so plaintiff No. 2 (appellant herein) had acquired the right and title over the suit land by purchase from Dhanu Tanti? could to be decided on the materials available on record by adopting the procedure contemplated in Order 41 Rule 24 of the CPC or whether the procedure contemplated in Order 41 Rule 23 of the CPC would be appropriate one or not? It is also equally well settled that it is not the duty of the Court to allow the party to filled up any lacuna and it is also duty of the court to do justice to the party by giving fair opportunity of putting up their case. The distinction between the power of remand under Order 41 Rule 23 and Order 41 Rule 23 A of the CPC is clear. Order 41 Rule 23 will come in when the trial Court dispose of the entire case otherwise then on a preliminary point and that the decree is reversed in appeal and the re-trial is considered necessary.

20. Keeping in view of the law laid down by the Apex Court and this Court, in the peculiar facts and circumstances of the present case discussed above, this Court is of the considered view that the proper steps after reversal or/setting aside the impugned judgment and decree would be the remand of the case to the trial Court to decide the issue:

Whether Shri Dhanu Tanti had acquired right and title over the suit land by prescription by adversely possessing the suit land as owner thereof openly against all including the vendor Shri Lachon Ram Teli for more than the prescriptive period of 12 years at the time of the execution of the two registered sale deeds viz. dated 2.1.1975 and 9.5.1975 and one rectification dated 9.5.1975 under which he transferred the suit land to the plaintiff No. 2 Smti Sonfulia Chandik and if so plaintiff No. 2 (appellant herein) had acquired the right and title over the suit land by purchase from Dhanu Tanti?

21. In the result, the appeal is allowed by setting aside the impugned judgment and decree. Remit the Title Suit No. 29 of 1990 to the trial Court for deciding all the issues including the new issue formulated above in the present judgment and order.

22. Both the parties shall be allowed to take appropriate plea if necessary regarding the new issue formulated in this judgment and order and shall also be allowed to adduce evidence. Parties are to appear before the trial Court on 30.7.2007. However, the trial Court shall make an endeavour in the peculiar facts and circumstances of the present case to settle the disputes between the parties in the Title Suit No. 29 of 1990 by taking recourse to the procedure prescribed in Section 89 of the CPC.