
(2006) 05 GAU CK 0035

Gauhati High Court

Case No: Regular Second Appeal No. 62 a/2006

Enayat Ali

APPELLANT

Vs

Siddique Ali and Ors.

RESPONDENT

Date of Decision: May 18, 2006

Citation: (2008) 2 GLR 304

Hon'ble Judges: I.A.Ansari, J

Bench: Single Bench

Advocate: L.N.Choudhury, M.H.Cnoudhury, Advocates appearing for Parties

Judgement

1. This Second Appeal has arisen out of the judgment and order, dated 10.8.2005, passed, in Title Appeal No. 14/2002, by the learned Additional District Judge (Ad hoc), Darrang, Mangaldoi, upholding the judgment and decree, dated 16.8.2002, passed, in Title Suit No. 22/1991, by the learned Civil Judge (Junior Division) No. 2, whereby the plaintiffappellant's suit was dismissed.

2. The case of the plaintiffappellant may, in brief, be described, thus: The suit land was inherited by one Faimuddin from his predecessorininterest thereof. The said Faimuddin sold the suit land to the plaintiff, on 14.8.1974, by a registered sale deed for a premises, the plaintiff sought for, inter alia, a decree declaring his rights, title and interest over the suit land.

3. The defendants contested the suit, their case being, in brief, that the said Faimuddin had died in the year 1972 and, hence, the sale deed, relied upon by the plaintiff, was a fabricated one. It is also the case of the defendants that they had purchased the suit land from erstwhile owner thereof and by virtue of their purchase, they have had been in use and occupation of the suit land.

4. Having found that the plaintiff had failed to prove that the said Faimuddin was alive in the year 1974, when the sale deed, in question, was shown to have been executed by the said Faimuddin, the learned trial court disbelieved the case of the plaintiff and dismissed the suit. The plaintiff preferred an appeal, but the same also

yielded no favourable result. It is against such concurrent findings that this second appeal has been preferred.

5. I have heard Mr. M.H. Choudhuri, learned counsel for the appellant.

6. While considering the present appeal, what may be noted is that the plaintiff examined altogether for witnesses in support of his case and though he claimed that he had purchased the suit land on 14.8.1974, the witness (PW4), who had also asserted that Faimuddin had sold the suit land to the plaintiff Md. Enayat Ali, admitted, in his cross-examination, that Faimuddin had died in the year 1972. In the face of such clear admission made by none other than the plaintiff's own witnesses, the learned courts below were not incorrect in concluding that the plaintiff had failed to prove that Faimuddin was alive at the time, when the sale deed, in question, was shown to have been executed by him; rather, the evidence on record proved, held the courts were also correct in concluding that PW2 was an interested witness and his mere claim that Faimuddin had sold the suit land to the plaintiff is immaterial, when PW2 was not even present at the time of execution of the sale deed. As far as PW3 is concerned, he was, admittedly, aged about 10/11 years, when the sale deed was said to have been executed. In the face of the evidence, so adduced by the plaintiff-appellant, the learned trial courts' conclusion that the plaintiff could not prove his title to the suit land cannot be said to be against the evidence on record or perverse. In short, the plaintiff's suit has failed due to his own failure to adduce convincing and reliable evidence.

8. Though an attempt has been made, on behalf of the plaintiff-appellant, to show that the evidence given by the witnesses of the defendants does not inspire confidence, the fact remains, though rudimentary, that the plaintiff has to succeed in his suit on the merit of his own case and he cannot obtain a decree by pointing out the weakness or deficiencies in the case of the defence. Considered in this light, it is clear that when the plaintiff had failed to prove that his vendor was alive on the day, when the sale deed, in question, was claimed to have been executed and the evidence on record, including the admissions made by the plaintiff's own witnesses, was to the effect that Faimuddin had already died in the year 1972, the findings of the learned courts below that Faimuddin was not alive at the time, when the sale deed, relied upon by the plaintiff, was said to have been executed, cannot be interfered with for, these findings of the learned courts below as already indicated hereinabove, cannot be said to be perverse or against the weight of the evidence on record.

9. The present appeal, thus, raises no, far less substantial, question of law.

10. Because of what has been discussed and pointed out above, this.