
Jadu Thakur and Others Vs On The Death of Kedar Prasad alias Kedar Prasad Ram and His Legal Heirs

None

Court: Gauhati High Court

Date of Decision: May 11, 2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 41 Rule 31

Citation: (2007) 2 GLR 526 : (2006) 4 GLT 389

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Final Decision: Allowed

Judgement

H.N. Sarma, J.

This second appeal arises out of the judgment and decree passed in T.A. No. 7/1989 dated 6.5.1994 by the learned

Assistant District Judge, Dhubri reversing the judgment and decree passed by the learned Munsiff No. 1 Dhubri in T.S. No. 551/82 and thereby

dismissing the suit of the plaintiff/appellant.

2. The plaintiff filed the aforesaid title suit for declaration of right title and interest of the plaintiff over the suit land measuring 2 Katha 5 dhur

covered by tauji No. 116 of Gauripur Estate situated at Bidyapara, Dhubri town in the then district Goalpara. The plaintiff also has prayed for

declaration that the revenue records where in the names of the defendants, have been entered, should be corrected by putting the names of the

plaintiff. There was also a prayer for injunction. It is alleged in the plaint that the predecessor of the plaintiff, namely, Mongara Thakur and Binda

Thakur were the owners of the suit land wherein, the plaintiff has got their possession having right title and interest over the suit land. In the last

survey and settlement operation the area of the suit land become 11 Lecha and the names of the defendants have been recorded over the said area

in Khatian No. 393 covered by Dag No. 832. Although the defendants are under tenants of proforma defendant Nos. 4 to 7, taking advantage of

such wrong records the defendant tried to dispossess the appellants from the suit land on 15.7.1982 and, hence, the suit was filed praying for the

aforesaid relief.

3. Summons of the suit having been served, the defendant No. 1 contested the suit by filing written statement. In the written statement apart from

taking usual defences, it is pleaded, inter alia, that the plaintiffs are only monthly tenant of the defendants at the rate of Rs. 50 per month and have

not been paid the rent for many years and with dishonest intention filed the suit falsely. The allegation of attempted dispossession of the plaintiff

have also been denied. It is further pleaded that one Banshi Dhar brother of the defendant has got right title and interest over the suit property.

4. Upon consideration of the respective pleadings, the learned trial court framed the following issues:

1. Whether the suit is maintainable ?

2. Is there any cause of action of the suit ?

3. Whether the suit has been properly valued ?

4. Whether the plaintiffs have right, title, interest in the suit land ?

5. What relief/reliefs if any, the plaintiffs are entitled ?

5. During the course of trial, plaintiff examined as many as six witnesses including the plaintiff No. 1. The defendants also examined six witnesses.

Some documents have also been exhibited during the course of trial. The trial court after consideration of the evidence, both oral and documentary

and decided all the issues in favour of the plaintiff and decreed the suit vide judgment and order dated 29.3.1989 passed in T.S. No. 551/82.

Challenging the said judgment and decree, the defendant filed T.A. No. 7/89 in the court of Assistant District Judge, Dhubri. The learned appellate

court, vide judgment and order 6.5.1994 allowing the appeal reversed the judgment and decree passed by the learned trial court particularly

reversing the decision on issue No. 3 and dismissed the suit of the plaintiff. Challenging the said Judgment, the present second appeal has been

filed.

6. I have heard Mr. B.K. Goswami, learned senior counsel for the appellant and Mr. G.N. Sahewalla, learner senior counsel for the defendant-

respondent.

7. This appeal was admitted on 30.8.1994 to be decided on the following substantial questions of law:

1. Whether the learned Asstt. District Judge committed error of law in ignoring the material documents, namely, exts. 1, 2, 3 and 4 ?

2. Whether the learned Asstt. District Judge committed error of law in ignoring the material evidence of DW-1 ?

3. Whether the learned Asstt. District Judge was right in law in acting upon the application No. 1193 dated 24.6.1993 said to have been filed by

Brindra Thakur ?

8. Referring to the impugned judgment passed by the learned appellate court, Mr. Goswami, learned senior counsel submits that the learned

appellate court reversed the findings on issue No. 3, which relates to right title and interest of the plaintiff over the suit land, only on the ground that

the plaintiff No. 1 by submitting an application No. 1093 dated 24.6.1993 admitted the subsisting title of the appellant over the suit land and on the

basis of the said admission relating to title, the learned appellate court did not consider it necessary to seek further proof regarding the title over the

suit property, and held, thus ""in the event of such admission it is not required to see the subsisting title claimed by the respondent over the suit land

particularly to the extent of share of the principal respondent No. 1 over the suit land"". It is submitted by Mr. Goswami, learned senior counsel that

the aforesaid decision of the learned appellate court on the basis of alleged application filed by defendant No. 1 is on the face of illegal and not

sustainable in law. Mr. Goswami further submits that the learned appellate court illegally refused to consider the Exhibits 1, 2, 3 and 4 which were

admitted in evidence without any objection and in fact the exhibits "Ka", "Kha" and "Ga" which came from the defendant side have also been

rejected. Accordingly, there is no any documentary evidence to consider in the appeal and the same was to be decided only on the basis of oral

evidence of the parties. Interestingly there is also no consideration of the oral evidences, i.e., the statement of the witnesses in the impugned

judgment passed by learned court below. It is also assailed that the reason for not accepting the evidence of the plaintiff appellant on the ground

that out of total three, only one plaintiff was examined and other plaintiffs did not examine them self, is on the face of it is arbitrary and absurd in

exercising the power by an appellate court and self-contradictory inasmuch as none of the defendants, in this case also examined as witness in the

suit. Submitting as aforesaid, Mr. Goswami, learned senior counsel has argued that the learned appellate court in fact, mis-guided himself in

deciding the appeal and has not acted upon within the ambit of law as required, to be acted as an appellate court in reversing the judgment and

decree passed by the court below.

9. Mr. G.N. Sahewalla, learned senior counsel for the respondent supporting the impugned judgment has raised an issue that as out of 20 legal

heirs of the deceased appellate No. 1, the name of three such legal heirs have been struck off, the appeal itself is not maintainable. It is further

submitted that on the basis of material available before the court, the plaintiffs had failed to prove any semblance of right over the suit land justifying

the validity of the decree that has been passed by the learned trial court in their favour. It is further submitted that the plaintiffs had failed to prove

their right title and interest over the suit property and the ultimate decision taken by the learned appellate court cannot be faulted with.

10. I have carefully considered the rival submissions put forwarded by the learned Counsel for the parties. I have also perused the relevant

records. In the instant case, the right title and interest of the plaintiff/respondent which was declared by the trial court in their favour has been

reversed by the learned appellate court only on the basis of the contents of the application No. 1193 dated 24.6.1993 purported to have been

filed by the Plaintiff No. 1 before the lower appellate court. In the instant suit both the parties submitted their pleadings, on the basis of which

necessary and relevant issues were framed. No subsequent pleading, except by way of amendment is allowed under the law. The learned appellate

court adopted a very peculiar method to short circuit the appeal by accepting and acting upon. It is interesting to note that the said application was

not filed by any counsel of the plaintiff No. 1 who was respondent No. 1 before the appellate court.

A Civil Suit is to be decided as per the provisions and discipline of the law as provided under the Code of Civil Procedure, which do not permit

impairing of such a document, without amendment of the pleading and bringing it on record by permissible legal procedure. In fact by allowing such

procedure, the learned appellate court has given a complete go by to the procedural aspects relating to "pleadings" and proof in a civil suit. It is

further strange that in the impugned judgment though the appellate court has held that the said application pertains the share of principal

respondent/plaintiff No. 1 (Brinda Thakur), allowed the appeal, dismissing the claim of other two plaintiffs without making any discussion thereon,

and in the absence of the alleged admission by them. The said application No. 1193 dated 24.6.1993 which is not an exhibited document, in fact,

cannot have any adverse affect of the claim of the plaintiff and the appellate court wholly acted illegally and without jurisdiction in deciding the

related issues on the basis of such application. It is a trite law that title to the property cannot pass on mere admission only and it is the

responsibility of the person who comes to the court for declaration of his right title and interest to prove the same. Consequently in answering the

substantial question Nos. 2, I hold that the learned appellate court was not at all justified on acting upon the said application No. 1193 dated

24.6.1993.

11. The learned appellate court rejected the Exhibit-1 on the ground that the said exhibit has not been laid down in evidence from the proper

custody. A document is admitted into a proceeding provided it found to be a relevant and admissible one under the Indian Evidence Act and

hardly on the ground stated by the learned Judge can be said to be legally sustainable justifying such rejection. It is further not stated as to who was

the proper custodian of exhibit-1 and who was to produce the same and the said document is rejected illegally. Discussing upon the exhibit-2 the

learned appellate Judge held, inter alia, that exhibit-2 gives presumptive inference which goes to show the possession of the respondents over the

suit land and in so many words it is held that it does not go to show title of the plaintiff over the suit property. Exhibit 3 which is a copy of the chitha

issued by Gouripur Raj Estate is stated to be photostat copy of a certified copy and was rejected as allegedly the original of the chitha was not

proved. The learned Counsel failed to take note that those documents were exhibited without objecting the admissibility of which cannot be

challenged at consequent stage. In fact the appellate court has failed to formulate the points for determination as required under Order 41, Rule 31

of CPC and on the reading of the judgment it is also difficult to find out what were the points formulated by the appellate court to decide the

appeal. Peculiarly, the appellate court also rejected the exhibit Ka, Kha and Ga without any justified reason. The reason as given by the appellate

court can hardly be said to be legally valid. Accordingly, answering the substantial question No. 2 formulated in this appeal holding that appellate

court committed error of law in not considering the exhibit Nos. 1, 2, 3 and 4 on the grounds as stated in the impugned judgment. In fact after,

discarding all the documentary evidence adduced by both the parties only the oral evidences left in the case were required to be discussed by the

appellate court which was also not done. The substantial question Nos. 1 and 2 are answered accordingly, in favour of the appellant.

12. In view of the above discussions, this second appeal is allowed and the impugned judgment and decree passed by the Assistant District Judge,

Dhubri in T.A. No. 7/89 dated 6.5.1994 is set aside and quashed. The appeal is remanded back to the appellate court for re-decision in

accordance with law. Since the appeal arises out of a suit filed in the year 1982, the learned appellate court shall make an endeavour to dispose of

the appeal, as expeditiously as possible.

13. As agreed both the parties are directed to appear before the learned appellate court on 12.6.2006 to receive further instruction in the matter.

The learned appellate court shall dispose of the appeal as expeditiously as possible preferably within a period of 2(two) months from the receipt of

record.

14. No costs.