NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2924 - 2925 OF 2014

Phanidhar Kalita .. Appellant(s)

-vs-

Saraswati Devi & Anr. .. Respondent(s)

J U D G M E N T

C. NAGAPPAN, J.

1. These appeals are preferred against the judgment and decree dated 23.3.2007 in R.S.A. No.116 of 2000 and the order dated 1.4.2008 in Review Petition no.1 of 2008 passed by the learned single Judge of the Guwahati High Court, whereby the High Court has partly allowed the Regular Second Appeal and dismissed the Review Petition, both filed by the appellant herein.

2. The appellant/plaintiff herein filed the Title Suit no.11 of 1987 against the respondent/defendant no.1 herein in the Court of Civil Judge (Junior Division) no.2, Mangaldoi for declaration of title in respect of 1 katha 16 lechas of land described in schedule-1 to the plaint covered by Dag no.52/575 of P.P. no.960 situated in village Mangaldoi gaon and also for recovery of khas possession of the suit land described in schedule-2, which is a part of the land in schedule-1 by demolishing the structure put by respondent no.1 herein/defendant no.1 and also for permanent injunction restraining the respondents herein/defendants from raising new constructions on the suit land. The case of the appellant/plaintiff is that he purchased 1 bigha of land, mentioned in schedule-1, from one Mukta Ram Saikia by Exh.4 registered sale deed dated 12.7.1977 and took possession of the same and got mutation of his name in the revenue record and obtained patta Exh.5 also. It is his further case that the respondent no.1/defendant no.1 also purchased 1 bigha of land from the original common owner Bati Ram, which is the adjacent northern portion of the appellant/plaintiff's land in schedule-1 and in November, 1978 respondent no.1/defendant no.1 constructed a thatched house by encroaching some portion of the appellant/plaintiff's land in schedule-1 and on measurement, it is found that respondent no.1/defendant no.1 had encroached an

extent of 1 katha 16 lechas which is described as schedule-2 in the plaint.

3. Respondent no.1/defendant no.1 filed written statement stating that she purchased 1 bigha of land from Bati Ram on 4.8.1955 and constructed a thatched house and she has not encroached on the suit land as alleged by the appellant/plaintiff.

4. Respondent no.2 herein/defendant no.2 impleaded himself in the suit and in his written statement he took the identical plea raised by the respondent no.1/defendant no.1 in her written statement. He further asserted that he never sold the suit property to the appellant/plaintiff and the sale deed dated 12.7.1977 is a forged one and he also filed a counter claim seeking declaration of title to the suit property and recovery of possession of the same from the appellant/plaintiff.

5. The said counter claim was resisted by the appellant/plaintiff by filing a written statement.

6. The trial Court framed 17 issues and the appellant/plaintiff examined himself and examined 5 other witnesses and marked 22 documents on his side. The respondents/defendant no.1 and 2 examined themselves and examined 4 other witnesses on their side.

The Trial Court on consideration of the oral and documentary evidence dismissed the suit as well as the counter claim. The appellant/plaintiff preferred an appeal against the dismissal of the suit in Title Appeal no.8 of 1998 before the Civil Judge (Senior Division), Darrang at Mangaldoi and the respondent no.2/defendant no.2 preferred a cross objection and the Lower Appellate Court dismissed both on contest. The appellant/plaintiff preferred Second Appeal in R.S.A. no.116 of 2000 and the Guwahati High Court held that the appellant/plaintiff had title to the suit property in schedule-1 and partly allowed the appeal. The appellant/plaintiff herein filed Review Petition no.1 of 2008 stating that since the main relief had been granted, the consequential relief for khas possession of schedule-2 property ought to have been granted to him. The High Court dismissed the Review Petition. Challenging the rejection of the relief of recovery of khas possession of schedule-2 property and the relief of permanent injunction in the Judgment as well as Review, the appellant/plaintiff has preferred the present appeals to this Court.

7. The learned counsel appearing for the appellant submitted that the High Court held that the findings of the Courts below with regard to the validity of sale deed of the appellant/plaintiff was perverse and allowed the Second Appeal in

part but erred in not granting the other reliefs prayed for by the appellant/plaintiff in the suit namely recovery of khas possession of schedule-2 property and permanent injunction, though it had framed substantial questions of law with regard to them. We also heard the learned counsel appearing for the respondents.

8. The appellant/plaintiff herein has prayed for declaration of his title to the suit property in schedule-1 and also for recovery of khas possession of the land described in schedule-2 which is part of land in schedule-1 by demolishing the structure put by the respondent no.1/defendant no.1 herein and also for permanent injunction restraining the respondents/defendants herein from putting up new construction at the suit land. By concurrent findings, the Trial Court and the Lower Appellate Court dismissed the entire suit. The High Court admitted the Second Appeal preferred by the appellant/plaintiff by framing the following substantial questions of law :

> **"(i) Whether the learned courts below were justified in holding that Ext.4 sale deed was not proved, merely because the executant of the deed was not examined?**
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> **(ii) Whether the learned courts below failed to consider some relevant materials such as**

Ext.2, Ext.5 and whether non-consideration of such material has vitiated the judgments?

(iii)Whether the learned trial court was justified to brush aside the amin commissioner's report by observing that it was incomplete and biased?"

By an elaborate judgment the High Court held that the findings of the courts below that the appellant/plaintiff had failed to prove his registered sale deed dated 12.7.1977 are perverse and upheld the title of the appellant/plaintiff to the suit property in schedule-1 and accordingly partly allowed the appeal by setting aside the portion of the judgment and decree of the courts below in that regard. In other words, the High Court answered the substantial question of law no.1 only and omitted to answer the other two substantial questions of law cited supra. The appellant/plaintiff pointed out the said omission by filing Review in Review Petition no.1 of 2008. However, the High Court dismissed it by holding that no ground is made out for Review.

9. The learned counsel for the appellant/plaintiff contended that on appellant/plaintiff's petition Amin Commissioner was appointed to measure the land in possession of the appellant/plaintiff as well as respondent no.1/defendant no.1 and the said Amin Commissioner was examined as Court witness no.1 and the Courts below were not justified to brush aside the Amin

Commissioner's report and decree ought to have been granted with regard to the other reliefs prayed for by the appellant/plaintiff. Per contra the learned counsel for the respondents/defendants contended that the Amin Commissioner has not measured the whole of surrounded dags of suit land and his report is incomplete, as rightly held by both the Courts below dealing on factual matrix.

10. We carefully considered the rival contentions and the records. The title of the appellant/plaintiff to the suit schedule-1 property has already been declared by the High Court and that finding has become final. The Trial Court as well as the Lower Appellate Court held that the Amin Commissioner has not measured the dags falling north east-east west of the appellant/plaintiff's land and the respondent no.1/defendant no.1's land. Whether schedule-2 is encroached property of the respondent no.1/defendant no.1 as alleged by the appellant/plaintiff has to be determined for adjudicating the other reliefs claimed in the plaint.

11. In the interest of justice, we deem it fit to remit the matter to the Trial Court for fresh adjudication with regard to the reliefs of recovery of possession and permanent injunction only.

12. The appeals are allowed and the impugned judgment and decree of the High Court, declining the reliefs of recovery of khas possession of schedule-2 property and permanent injunction, are set aside and the matter is remitted to the Trial Court for fresh adjudication with regard to the said reliefs only and the parties are permitted to adduce evidence and the Trial Court after adjudication shall pass a comprehensive decree in respect of all the reliefs claimed in the suit. No costs. Since the title suit is of the year 1987 the Trial Court shall endeavour to dispose of the same as expeditiously as possible preferably within a period of six months from the date of receipt of records.

.....J.
(T.S. Thakur)

.....J.
(C. Nagappan)

New Delhi;
March 14, 2014.