RSA 182/2002 BEFORE THE HON'BLE MR. JUSTICE B.P. KATAKEY

JUDGMENT & ORDER (Oral)

This appeal by the plaintiff is directed against the judgment and decree dated 3 1st May, 2002 passed by the learned Civil Judge (Senior Division), Karimganj in Title Appeal No.6/2000 allowing the appeal preferred by the present respondents/defendants by setting aside the judgment and decree dated 20th December, 1999 passed by the learned Civil Judge (Junior Division) No.1, Karimganj in Title Suit No.19/1996, whereby and whereunder the suit of the plaintiff was initially decreed.

- [2] The appellant as plaintiff instituted the aforesaid suit for dec laration of right, title and interest and conformation of possession in respect of the land measuring 3% Jastis, morefully described in schedule to the plaint, contending inter alia that the said land originally belonged to one Irshad Ali, who on 10th August, 1971 (Exhibit-24) sold it to Ashok Ranjan Paul by a register ed deed of sale, who in turn on 17th July, 1978 (Exhibit-26) sold it in favour o f the plaintiff by another registered deed of sale and accordingly the plaintiff was put into possession. The further case of the plaintiff is that since the 1 and sold by Irshad Ali in favour of Ashok Ranjan Paul and thereafter, in favour of the plaintiff is diagonal in shape, based on the possession given a deed of r ectification was required to be made correctly describing the boundary and accor dingly, Ashok Ranjan Paul executed a deed of rectification dated 4th March, 198 2 (Exhibit-25) correctly describing the boundary of the suit land, which in fact was sold by Irshad Ali in favour of Ashok Ranjan Paul. It has also been pleade d in the plaint that the Government of Assam, in a most illegal manner, has made the suit land khas by invoking the provisions of Section 6(4) of the Assam Stat e Acquisition of Zamindaries Act, 1951, which necessitated filing of the suit fo r declaration of right, title and interest over the suit land together with the houses standing thereon.
- [3] The defendants have contested the suit by filing written stateme nt, denying the claim of the plaintiff and contending inter alia that the plaint iff has failed to give proper and correct description of the suit land, which was made khas, as there were no tenants in respect of the suit land under the erst while Zaminder. It has further been pleaded that the suit land is a patit land classified as Gorabad. The defendants, therefore, have prayed for dismissal of the suit.
- [4] Based on the pleadings of the parties, the trial Court framed the following issues for determination:-
 - 1. Is there any cause of action for the suit?
 - 2. Whether the suit is barred by limitation?
- 3. Whether the plaintiff has got right title, interest an d possession over the suit land?
- 4. Whether the State of Assam illegally made the suit land khas U/S 6(4) of ASZA Act?
- 5. Whether the plaintiff is entitled to get a decree as prayed for?
- [5] The plaintiff and the defendants have led both oral and document

ary evidence in support of their respective claims.

- [6] The trial Court, upon appreciation of the evidence on record, bo th oral and documentary, has decreed the suit of the plaintiff, based on Exhibit s-24, 25 and 26 deeds.
- [7] Being aggrieved, the defendants preferred the aforesaid appeal, which has been allowed by the first appellate Court by holding that since the de scription of the land sold by Irshad Ali in favour of Ashok Ranjan Paul vide sal e deed dated 10th August, 1971 (Exhibit-24) and the suit land, as claimed by the plaintiff in the suit, does not tally, no decree declaring the right, title and interest of the plaintiff can be passed. The appellate Court, however, has recorded the finding that the plaintiff has purchased a plot of land from Ashok Ranjan Paul, which was sold to him by Irshad Ali vide Exhibit-24, i.e. sale deed dated 10th August, 1971. Hence, the present appeal.
- [8] The appeal was admitted for hearing vide order dated 29th Septem ber, 2003 on the following substantial questions of law:-
- 1. Whether the learned lower appellate court committed illegality in revers ing the Judgment and decree dated 20.12.1999 passed by the learned trial court a nd thereafter dismissing the Plaintiff's suit on the ground that description of the suit land given in the plaint did not conform to the sale deed of the plaint iff's vendor by completely ignoring the amended deed dated 4.3.1982.
- 2. Whether the appellate court was justified in reversing the Judgment and decree dated 20.12.99 without recording any contrary finding as regards the right title and interest of the plaintiff over the suit land?
- [9] I have heard Mr. S. Shyam, learned counsel for the appellant/pla intiff. None appears for the respondents/defendants today.
- [10] Mr. Shyam, learned counsel has submitted that the substantial question No.1 only, as formulated by the aforesaid order dated 29th September, 2003, arises in this appeal. Referring to the said substantial question of law, it has been submitted that though the trial Court, based on the evidence adduce d by the parties, both oral and documentary, as well as the recital of the deed of rectification dated 4th March, 1982 (Exhibit-25), decreed the suit of the pla intiff by holding that the suit land was the land transferred by Irshad Ali in f avour of Ashok Ranjan Paul, the vendor of the plaintiff, vide Exhibit-24 sale de ed dated 10th August, 1971, the first appellate Court has allowed the appeal by setting aside the judgment and decree passed by the trial Court, thereby dismiss ing the suit of the plaintiff, only looking at the description of the suit land given in the plaint and comparing the same with the description of the boundary given in the sale deed dated 10th August, 1971 (Exhibit-24), without bothering t o appreciate the contents of the deed of rectification dated 4th March, 1982 (Ex hibit-25). The learned counsel further submits that the first appellate Court ha ving recorded the finding that - there is also no doubt that a plot of land mea suring three and half jastis was sold by Irshad Ali to Ashok Ranjan Paul and sub sequently said Ashok Ranjan Paul sold this land to plaintiff , the appeal prefer red by the defendants ought not to have been allowed by setting aside the judgme nt and decree passed by the trial Court without appreciating the Exhibit-25, dee d of rectification dated 4th March, 1982. The learned counsel, therefore, submi ts that the judgment and decree passed by the first appellate Court may be set a side and the appeal may be remitted to the first appellate Court for deciding th e same afresh by giving opportunity to the appellant to lead evidence, if necess ary, to remove the doubt relating to the change of boundary.

- I for the appellant. As noticed above, none has appeared on behalf of the respondents today to argue the appeal.
- [12] The plaintiff's claim for declaration of right, title and intere st and conformation of possession is based on the purchase. The plaintiff could prove his case that Irshad Ali has sold 3% Jastis of land in favour of Ashok Ra njan Paul vide sale deed dated 10th August, 1971 (Exhibit-24), who, in turn vide sale deed dated 17th July, 1978 (Exhibit-26) sold the said land in favour of th The plaintiff could also prove by adducing evidence that he is pos sessing 3% Jastic of land in respect of which the possession certificate was als o issued by the Sub-Deputy Collector (Exhibit-12). The vendor of the plaintiff, after execution of the Exhibit-26 sale deed dated 17th July, 1978, executed a d eed of rectification dated 4th March, 1982 (Exhibit-25) giving the boundary of t he land sold by him in favour of the plaintiff, which, according to Ashok Ranjan Paul, is the correct boundary description. Both the Courts have held that Irsh ad Ali sold 3% Jastis of land in favour of Ashok Ranjan Paul, who, in turn sold the same in favour of the plaintiff. The said findings recorded by both the Cou rts below have not been challenged by the defendants
- [13] The question, which, therefore, arose for determination was whet her the land, as described by the plaintiff in the plaint, pursuant to the deed of rectification dated 4th March, 1982 (Exhibit-25), is the land which Irshad Al i sold to Ashok Ranjan Paul vide Exhibit-24 sale deed dated 10th August, 1971, a nd by Ashok Ranjan Paul to the plaintiff vide sale deed dated 17th July, 1978 (Exhibit-26). While the trial Court has found that the suit land is the land sold by Irshad Ali in favour of Ashok Ranjan Paul, the same, however, has been set a side by the first appellate Court by comparing the boundary description of the suit land given in the plaint and the boundary description given in the sale deed dated 10th August, 1971 (Exhibit-24), without, however, taking into consideration the contents of the deed of rectification dated 4th March, 1982 (Exhibit-25), wherein certain explanations, have been given relating to change of boundaries.
- [14] The first appellate Court being the final Court on facts, is required to appreciate all the evidences on record, more so, when the first appellate Court set aside the finding recorded by the trial Court, which having not been done, the judgment and decree passed by the first appellate Court is set aside. The appeal is emitted to the first appellate Court for deciding the same afresh, having regard to the observation made above. It is also open to the appellant to file appropriate application for allowing him to adduce additional evidence under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, in so far as it relates to the boundary description of the suit land. In the event of filing such application, the same shall definitely be dealt with by the first a ppellate Court in accordance with law.
- [15] The appeal is accordingly allowed to the extent as indicated above. No costs.
- [16] The parties are directed to appear before the first appellate Co urt on 23rd September, 2013.
- [17] The Registry is directed to send down the records, so as to reach the first appellate Court on or before 16th September, 2013.