



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

RSA No. 23/2022

On the death of Rajat Chatterjee his legal heirs-

1. Smt. Babli Chatterjee,
W/o Late Rajat Chatterjee.
2. Shri Raktim Chatterjee,
S/o Late Rajat Chatterjee.

Both are residents of Paltan Bazar,
Guwahati, PO-Rehabari, PS-Paltan Bazar,
Dist.-Kamrup(M), Assam.

.....Appellants.

-Versus-

Shri Tara Chand Nahata,
S/o Late M.C. Nahata,
Resident of C/o Fashion Spot, G.S. Road,
Sadar Thana, Police Bazar, Shillong, Meghalaya.

.....Respondent.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Appellants : Mr. S.P. Choudhury.Advocate.

For the Respondent : Mr. J.C. Gaur.Advocate.

Dates of Hearing : 23.09.2024 & 26.09.2024

Date of Judgment : ***17th December, 2024***

JUDGMENT AND ORDER

Heard Mr. S.P. Choudhury, learned counsel for the appellants and also Mr. J.C. Gaur, learned counsel for the respondent.

2. This second appeal, under Section 100 of the Code of Civil Procedure, is directed against the judgment and decree dated 30.09.2019 passed by the learned Civil Judge (Senior Division) No.3, Kamrup(M), Guwahati, in Title Appeal No.104/2016. It is to be noted here that vide impugned judgment and decree dated 30.09.2019, the learned First Appellate Court has quashed and set aside the judgment and decree dated 09.06.2016 passed by the learned Munsiff No.2, Kamrup(M), Guwahati, in Misc.(J) Case No.412/2011, arising out of Title Execution Case No.08/2011 corresponding to Title Suit No.472/2009 and thereby dismissed the application filed by the respondent No.1 purportedly under Order 21 Rule 97 of the CPC.

3. The background facts leading to filing of the present appeal, is briefly stated as under:-

“The appellant herein as plaintiff had instituted a suit for eviction of the defendant, namely, Anup Thakuria, on the ground of *bona-fide* requirement and defaulter of rent and also for recovery of arrear rent of Rs.49,000/-. The defendant, namely, Anup Thakuria entered appearance and filed written statement admitting that he could not make payment of rent for two months due to financial loss in the business and prayed for time to pay the arrear rent after negotiation with the plaintiff. Thereafter, the plaintiff filed one Petition No.716/2010, under Order 12 Rule 6, read with Section

151 of the CPC to pass a judgment and decree on admission. Thereafter, hearing both the parties, the learned Munsiff, vide judgment and decree dated 17.09.2010 had decreed the suit on admission without cost and held that the plaintiff is entitled to get the khas possession of the suit premises by evicting the defendant or any person claiming under him and the plaintiff is also entitled to arrear rent of Rs.49,000/-. Thereafter, the appellant herein filed one execution proceeding for execution of the said decree. In the said execution proceeding, the learned Executing Court issued warrant, but could not execute the same because of the resistance put by the respondent No.1 herein. Thereafter, the respondent No.1 herein had filed one petition under Order 21 Rule 97 of the CPC for dismissal of the execution case on the ground that he is in actual possession of the suit property and that the decree was obtained by falsely impleading the proforma respondent No.2, Shri Anup Thakuria, as sole defendant in Title Suit No.472/2009. Upon the said objection petition, the learned Executing Court has registered a miscellaneous case, Misc.(J) Case No.412/2011, and thereafter, upon the pleadings of the parties, the learned Munsiff/Executing Court had framed the following issues:-

1. Whether the petition filed by the objector is maintainable?
2. Whether the objector is a tenant in respect of the suit premises under the decree holder?
3. Whether the objector is entitled to the reliefs claimed in the petition?
4. To what relief/reliefs the parties are entitled to?

Thereafter, taking the evidence and hearing both the parties, the learned Munsiff No.2, Kamrup(M), Guwahati, has dismissed the petition vide order dated 09.06.2016.

Being aggrieved by the said judgment and decree, the respondent No.1 herein preferred an appeal before the learned Civil Judge (Senior Division), under Order 41 Rule 1 and 3 read with Section 96 of the CPC and thereafter, the learned First Appellate Court had formulated two points for determination:-

- (i) Whether the objector of a decree (appellant) is a tenant under respondent No.1 in respect of the suit premises, which is subject matter of Title Execution No.08/2011?
- (ii) Whether the decree passed by the learned Munsiff in Title Suit No.472/2009 is an executable decree?

Thereafter, hearing both the parties and considering the evidence on the record, the learned First Appellate Court has allowed the appeal by setting aside the impugned order.”

4. Being highly aggrieved, the appellants approached this Court by filing the present appeal, on the ground that the learned First Appellate Court has erred in law as well as in facts in allowing the appeal, as there was no appreciation of evidence with regard to the specific finding of the learned Munsiff No.2, Kamrup(M), Guwahati, with regard to the relevant aspect of the matter that the respondent No.1 could not establish existence of subsisting right over the suit property as described in the schedule of the plaint and the learned First Appellate Court has misconstrued the evidence of the appellant and also did not take note of the legal proposition that the respondent No.1 being the objector is to

stand on its own feet and without adducing any evidence merely exhibiting unregistered document cannot establish the flow of right.

5. Thereafter, this Court was pleased to admit the appeal on the following substantial questions of law:-

- (i) Whether the impugned judgment and decree of the learned Lower Appellate Court is based on misinterpretation of the evidences and documents on record and as such perverse?
- (ii) Whether the learned Lower Appellate Court had misconstrued the provision of Section 101 of the Evidence Act and thereby had arrived at an erroneous finding?
- (iii) Whether the learned Lower Appellate Court passed the impugned judgment and decree in contravention of the provisions of Order XLI Rule 31 of the Code of Civil Procedure?

6. Mr. Choudhury, learned counsel for the appellants submits that the learned First Appellate Court has committed manifest illegality in setting aside the impugned judgment and decree passed by the learned Munsiff No.2, Kamrup(M), Guwahati, in the petition under Order 21 Rule 97 of the CPC. Mr. Choudhury, further submits that the learned First Appellate Court has misconstrued the provision of Section 101 of the Evidence Act and passed the impugned judgment and decree in contravention of the Order XLI Rule 31 of the Code of Civil Procedure and therefore, Mr. Choudhury contended to allow the appeal.

6.1. In support of his submission, Mr. Choudhury has referred two decisions of Hon'ble Supreme Court in the case of **M/s Natesan Agencies (Plantations) v. State Rep. by Secretary to the Environment and Forests Department**, reported in (2019) 15 SCC

70 and in the case of **Ali Hussain (D) Through Lrs. v. Rabiya & Ors.**, reported in **(2019) 9 SCC 353**.

7. On the other hand, Mr. Gaur, learned counsel for the respondent has supported the impugned judgment and decree. Mr. Gaur, submits that the decree, which was put into execution is obtained by fraud and it was obtained by the appellant herein along with the respondent Anup Thakuria and at the relevant time, there was a tenancy agreement between the respondent herein and Late Uma Chatterjee, the predecessor in interest of the present appellants and therefore, Mr. Gaur has contended to uphold the same. Mr. Gaur, has also referred to a decision of Hon'ble Supreme Court in the case of **Rajesh Jain v. Ajay Singh**, reported in **(2023) 10 SCC 148**, to contend that the onus of rebutting presumption is upon the appellant and they had failed to rebut the same by raising a probable defence.

8. Having heard the submission of learned counsel for both the parties, I have carefully gone through the memo of appeal and the grounds mentioned herein and also perused the impugned judgment and decree passed by the learned First Appellate Court and also by the learned Munsiff No.2, Kamrup(M), Guwahati, in Misc.(J) Case No.412/2011, dated 09.06.2016.

9. It appears that the learned Munsiff No.2, in the impugned judgment and decree dated 09.06.2016 has held that the objector/respondent No.1 herein has exhibited one agreement between him and the decree holder on 10.06.2011, as Exhibit-1 and also exhibited rent paying receipt as Exhibit-4 and the bank account as Exhibit-3, but he failed to substantiate his claim by adducing tenancy agreement entered

into by him with the predecessor-in-interest Uma Chatterjee in the year 1991 and therefore, the learned Munsiff has dismissed the same.

10. But, the learned First Appellate Court while dealing with the points for determination, especially in Point No.(i), held that Exhibit-1 is a notarized document and as such, statutory presumption in favour of execution of the same, in the light of Section 114 illustration (e) of the Evidence Act, would arise in favour of the appellant, i.e. the respondent herein, and though it was contended by the respondent in the said appeal that the rent agreement was a fraudulent document, as at the relevant time, the respondent was in unsound state of mind and the appellant had allegedly exerted mental pressure upon him and took his signature on some blank papers and had converted the same into rent agreement. Thereafter, the learned First Appellate Court held that the burden of proof that the aforesaid alleged creation of fraudulent document and as regards unsoundness of mind of the predecessor-in-interest of the appellant herein, at the relevant period of time was upon the respondent, predecessor-in-interest of the appellant herein, in view of the provision of law laid down under Section 101/102 of the Evidence Act, when the defendant had admittedly, put his signature over the disputed document.

11. Thereafter, the learned First Appellate Court held that the fact alleged by the defendant is erroneous and hence, his case stands disproved and consequently, held that the notarized rent agreement coupled with possession of the appellant over the suit premises, the fact that there was allegedly landlord-tenancy relationship between the appellant and the predecessor of the respondent since 1991 and

subsequently, with the respondent No.1 by virtue of Exhibit-1 was there and accordingly, the learned First Appellate Court decreed the suit.

12. It is a fact that the person who alleged fraud or undue influence or misrepresentation, has to specifically plead the same with sufficient particulars in view of Order VI Rule 2 and 4 of the CPC. (See:- *Bellachi v. Pakeeran*, (2009) 12 SCC 95 : (2009) 4 SCC).

13. While dealing with the issue of burden of proof, Hon'ble Supreme Court in the case of *Anil Rishi vs. Gurbaksh Singh*, reported in (2006) 5 SCC 558, has held as under:-

8. The initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act, which reads as under:-

“101. *Burden of proof.*— Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

9. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be an exception thereto.

.....”

13.1. Again in paragraph No.16 it has also been held that -

“16. Thus, point for determination of binding interests or which are the cases which come within the rule of active confidence would vary from case to case. If the plaintiff fails to prove the existence of the fiduciary relationship or the position of active confidence held by the defendant-appellant, the burden would lie on him as he had alleged fraud. The trial court and the High Court, therefore, in our opinion, cannot be said to be correct in holding that without anything further, the burden of proof would be on the defendant.”

14. Here in this case, the respondent had exhibited the rent agreement between him and Late Uma Chatterjee as Exhibit-1 and Uma Chatterjee has admitted his signature over the Exhibit-1 and as such, a presumption under Section 114(e) of the Evidence Act is available in favour of the said document and the learned First Appellate Court has rightly drawn the same in favour of the appellant. And further, it appears that the suit premises was in the possession of the respondent herein, the objector in the Title Execution proceeding, which goes a long way to show that there exist landlord and tenancy relationship between the predecessor-in-interest of the appellants herein and the present respondent in 1991 and subsequently, by virtue of Exhibit-1. In absence of any proof of existence of fiduciary relationship, the burden of proof to establish that the Exhibit-1 is a fraudulent document and as regards unsoundness of mind of the predecessor-in-interest of the appellants herein, lies upon the appellants herein. This being the factual and legal position, it cannot be said that the learned First Appellate Court had misconstrued the provision of Section 101 of the Evidence Act and arrived at an erroneous finding.

15. Though Mr. Chaudhury, the learned counsel for the appellants submits that the learned First Appellate Court had not discussed all the point for determination and answered the same and thereby violated the mandate of Order 41 Rule 31 CPC and the third substantial question of law is framed on this count, yet, I find that the learned First Appellate Court has discussed all the points having formulated the same for determination and arrived at a reasoned finding. That being so, the submission of Mr. Chaudhury, seems to be devoid of merit. In this context, we may gainfully refer to a decision of Hon'ble Supreme Court in the case of **Mrugendra Indravan Mehta and Others vs. Ahmadabad Municipal Corporation**, reported in (2024) 6 SCR 594, wherein it was held that even if the first appellate Court does not separately frame the points for determination arising in the first appeal, it would not prove fatal as long as that Court deals with all the issues that actually arise for deliberation in the said appeal.

16. I have also gone through the decisions referred by Mr. Chaudhury and also by Mr. Gaur and I find that the ratios laid down in the said cases are not applicable in all force to the given facts herein this case and therefore, I am not inclined to burden this judgment with detail discussion of the same.

17. Thus, having examined the impugned judgment and decree so passed by the learned First Appellate Court, I find that the same suffers from no infirmity or illegality and on such count it cannot be said to be perverse requiring interference of this Court by invoking its jurisdiction under Section 100 CPC.

18. It is to be noted here that in the case of **Chacko & Another v. Mahadevan**, reported in (2007) 7 SCC 363, while dealing with the

jurisdiction of Sections 96 and 100 of the C.P.C., Hon'ble Supreme Court has held as under:

"6. It may be mentioned that in a first appeal filed under Section 96 CPC, the appellate court can go into questions of fact, whereas in a second appeal filed under Section 100 CPC the High Court cannot interfere with the findings of fact of the first appellate court, and it is confined only to questions of law."

19. In the result, and in view of aforesaid discussion and findings, the substantial questions of law, so framed herein this case, stands answered in negative.

20. In terms of above, this second appeal stands dismissed, leaving the parties to bear their own cost. Send down the record of the learned courts below with a copy of the judgments and order.

Sd/- Robin Phukan
JUDGE

Comparing Assistant