

GAHC010030342024



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

RSA/42/2024

Hemanta talukdar
S/o Ajit Talukdar,
Resident of Village Bamakhata
(Gangapara Chupa)
PO Bamakhata, Mouza Uttar Bajali,
PS Patacharkuchi,
Dist Barpeta, Assam 781325

.....Appellant

-Versus-

Bhabesh Kalita
S/O Late Surendra Nath Kalita
Resident of Village Barbang,
PO Barbang, Mouza Uttar Bajali,
PS Patacharkuchi, Dist Barpeta,
Assam 781325

.....Respondent

For Appellant : Mr. U. K. Das, Advocate
For Respondent(s) : Mr. D. Choudhury, Caveator/Respondent
Date of Order : 29.07.2024

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

- 1.** Heard Mr. U. K. Das, learned counsel for the Appellant. Also heard Mr. D. Choudhury, learned counsel for the Caveator/sole respondent.
- 2.** This Regular Second Appeal under Section 100 of the Code of the Civil Procedure, 1908, has been filed by the appellant, Shri Hemanta Talukdar, impugning the judgment and decree dated 26.09.2023, passed by the learned Additional District Judge, Barpeta, in Money Appeal No. 01/2023, whereby the judgment and decree dated 19.10.2022, passed by learned Civil Judge (Senior Division), Barpeta, in Money Suit No. 04/2016, was affirmed.
- 3.** The facts relevant for consideration of the instant Second Appeal, in brief, are as follows:
 - i.** The respondent, Shri Bhabesh Kalita, as plaintiff, had instituted a suit against the appellant/defendant, before the Court of learned Civil Judge, Barpeta, which was registered as Money Suit No.4/2016.
 - ii.** The respondent/plaintiff had stated in his plaint that he and the present appellant were childhood friends and they maintain a good relationship. The respondent/plaintiff had stated that he was looking for buying a plot of land at Guwahati and the

appellant/defendant approached the respondent/plaintiff and offered him to sell a plot of land measuring 3 Kathas at Barbari in Upper Hengrabari, Guwahati.

- iii.** It is averred by the respondent/plaintiff in the plaint that on 25.12.2012, he visited the aforesaid plot of land at Barbari, Guwahati along with the appellant/defendant and the appellant showed him the 3 Kathas of land and told him that he has possession as well as the title over the aforesaid land. The respondent/plaintiff pleaded that thereafter, they negotiated the price of the land and accordingly, the respondent/plaintiff paid Rs. 6,00,000/- (Rupees Six Lakhs only) to the appellant/defendant on 12.12.2013 by way of three cheques bearing cheque number 109053, 109054 and 109055 dated 16.02.2013, which were encashed by the appellant/defendant.
- iv.** The respondent/plaintiff has also pleaded in his plaint that on 05.03.2014 he visited the said plot of land at Barbari, Guwahati and started to take measurement of the said land but some persons of the locality came and offered resistance and threatened him. Those persons told him that the said land does not belong to the appellant/defendant.
- v.** When the respondent/plaintiff approached the appellant/defendant, he assured him that there might

be some misunderstanding and that land belongs to him. However, the respondent/plaintiff made some enquiries with the concerned authorities and came to know that the appellant/defendant is not the owner of the said plot of land and he had no authority or control over the said land.

- vi.** The respondent/plaintiff has also stated in his plaint that the appellant/defendant had cheated him and committed fraud on him as the appellant/defendant knew all along that he was not the owner of the said plot of land, but in spite of that he projected himself as owner of the land and took Rs. 6,00,000/- (Rupees Six Lakhs only) from the respondent/plaintiff against the said land.
- vii.** Hence, the respondent/plaintiff filed the aforesaid Money Suit praying for realisation of Rs. 6,00,000/- (Rupees Six Lakhs only) from the appellant/defendant and also sought for a compensation of Rs.1,50,000/- from him.
- viii.** The appellant/defendant appeared before the Trial Court and contested the suit by filing a written statement. He had pleaded, in his written statement, that he was in possession over the plot of land measuring 1 Kathas 10 Lechas at Barbari since the year 1990 and had applied before the concerned Revenue Authorities for allotment of aforesaid land in his favour

on 08.11.2006. He has also stated in his written statement that the plaintiff knew very well the status of the land and the fact that the appellant/defendant had only possessory right over the said land.

- ix.** It is also stated in the written statement that the respondent/plaintiff knew very well that the land in question was not allotted to the appellant/defendant by the Revenue Authorities and he only had the possessory rights over the said plot of land and knowing fully well he agreed to purchase only the possessory right of the said land and accordingly, the consideration amount for sale of possession of the land was fixed at Rs. 6,00,000/- (Rupees Six Lakhs only).
- x.** The appellant/defendant had admitted in his written statement that he had received an amount of Rs. 6,00,000/- (Rupees Six Lakhs only) from the plaintiff towards the consideration amount for sale of possessory right over the said plot of land and as the possession was already handed over to the respondent/plaintiff is not entitled to recover the said amount from the appellant/defendant.

4. Upon pleading of the parties, the Trial Court framed following issues:

- i.** Whether there is any cause of action for the plaintiff's suit?

- ii.** Whether on 16.02.2013 the defendant fraudulently received Rs. 6,00,000/- (Rupees Six Lakhs only) vide cheques from the plaintiff's projecting himself to have title and authority to sell a plot of land at Barbari and executed an agreement?
 - iii.** Whether the plaintiff is entitled to a decree as prayed for?
 - iv.** To what relief(s) the parties are entitled?
- 5.** Both the parties adduced evidence in support of their respective cases. The respondent/plaintiff adduced evidence of two witnesses and exhibited three documents in support of his case. Whereas, the appellant/defendant adduced evidence of four DWs and exhibited as many as five documents to support his case.
- 6.** After hearing both the parties and after considering the evidence adduced by them, the Trial Court decided all the four issues in the affirmative and decreed the suit of the respondent/plaintiff directing the appellant/defendant to pay the decretal amount of Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only) with an interest at the rate of 6% per annum with effect from the date of filing of the suit till full and final realization of the decretal amount.
- 7.** While deciding the issue No. 4, the Trial Court came to the finding on the basis of evidence on record that the land in question was a government khas land which was not allotted

to anybody and the appellant/defendant had no right over the said plot of land.

- 8.** It also came to the finding that the land was never given in possession to the respondent/plaintiff.
- 9.** The Trial Court also came to the finding that fraud was practiced by the appellant/defendant on the respondent/plaintiff by making the respondent/plaintiff to part with Rs. 6,00,000/- (Rupees Six Lakhs only) on the false promise of selling of land to him by the appellant/defendant. The Trial Court also came to the finding that the appellant/defendant has admitted the receipt of Rs. 6,00,000/- (Rupees Six Lakhs only) from the respondent/plaintiff.
- 10.** Being aggrieved by the judgment and decree passed by the Trial Court, the appellant/defendant preferred the first appeal against the said judgment and decree which was registered as Money Appeal No.01/2023 before the Court of learned Additional District Judge, Barpeta.
- 11.** In the Memo of Appeal, the appellant/defendant took following grounds for preferring the first appeal against the judgment and decree of the Trial Court:
 - i.** That the learned lower Court has erred in law and facts in deciding the suit;
 - ii.** That the Court below failed to appreciate the evidence on record in its proper perspective;

- a.** That the plaintiff had paid and the defendant had received Rs. 6,00,000/- (Rupees Six Lakhs only) towards the sale consideration of land at Barbari by way of 3 cheques;
 - b.** That the defendant had sold and plaintiff had agreed to purchase the land in question and they had entered into written agreement in this regard which is marked as Exhibit-1.
- 14.** While considering the point for determination, in the first appeal, the Court of learned Additional District Judge, Barpeta observed that the Exhibit-1 which is the agreement dated 16.02.2013 is only a document acknowledging the receipt of Rs. 6,00,000/- (Rupees Six Lakhs only) by the appellant/defendant from the respondent/plaintiff towards the sale of land.
- 15.** It is observed that Exhibit-1 does not contain the description of the land in question or other particulars of the land as to whether it is a government khas land or a periodic patta land or an annual patta land. Hence, it was held that on mere perusal of the Exhibit-1, same cannot be held to be a document on which the respondent/plaintiff could have been aware about the nature of land in question.
- 16.** Though, the First Appellate Court differed in its conclusion from the Trial Court regarding the fact as to whether plaintiff took possession of the land or not, however, both the Trial Court as well as the First Appellate Court concurred in their

finding that the appellant/defendant had fraudulently induced the respondent/plaintiff to believe that the land in question was owned by the appellant/defendant and he had transferable right, title interest over the land in question. Moreover, it is also held by the First Appellate Court that Exhibit-1 does not mention that the sale consideration was received for selling only possessory right of the land in question and not for transferring the title over the said land.

- 17.** Accordingly, the First Appellate Court affirmed the judgment and decree of the Trial Court and held that the Trial Court had rightly directed the appellant/defendant to pay Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only) to the respondent/plaintiff along with an interest at the rate of 6% per annum from the date of filing of suit till realization.
- 18.** In preferring the instant Regular Second Appeal against the judgment of the First Appellate Court, the appellant/defendant had, in his Memorandum of Appeal, stated the following substantial question of law as involved in the instant second appeal:
 - i.** Whether the learned Courts below erred in law in granting decree for recovery of consideration on the basis of an agreement, i.e., Exhibit-1, declaring the agreement as void?
 - ii.** Whether the learned Courts below erred in law by granting relief on the basis of an agreement, Exhibit-1,

beyond the terms and condition of the agreement per se?

- iii.** Whether the learned Courts below erred in law by holding that the appellant/defendant committed fraud despite having no ingredient of fraud as defined in Section 17 of the Indian Contract Act, 1872, and in contrary to the exception provided in Section 19 of the Indian Contract Act, 1872?
 - iv.** Whether the learned Courts below erred in law in applying the principles of preponderance of probability in favour of respondent/plaintiff by holding that the respondent/plaintiff without knowing the revenue status of the land paid the entire amount of consideration to the appellant/defendant and enjoyed possession of the land in question till eviction by the government.
 - v.** Whether the judgment and decree impugned or vitiated by perversity for wrong appreciation of evidence and misinterpretation of law and facts involved.
- 19.** As regards the substantial question of law nos. (i) and (ii), stated by the appellant in the Memo of Appeal, the learned counsel for the appellant has submitted that both the Trial Court as well as the First Appellate Court have held that the agreement dated 16.02.2013 executed between the parties was not enforceable by law. Hence, it is submitted by learned counsel for the appellant that as per Section 2(g) of the Indian Contract Act, 1872, the said agreement has to be

treated as a void agreement and the Trial Court as well as the First Appellate Court were wrong in granting relief on the basis of the agreement which is void by going beyond the terms and conditions of the said agreement.

- 20.** This Court fails to persuade itself with the submission made by learned counsel for the appellant as from the materials available on record it appears that the agreement in question was only evidence of acknowledgement of receipt of Rs. 6,00,000/- (Rupees Six Lakhs only) by the appellant/defendant from the respondent/plaintiff. The receipt of Rs. 6,00,000/- (Rupees Six Lakhs only) from the respondent/defendant by the appellant/defendant has not been disputed by the appellant. The Trial Court as well as the First Appellate Court decreed the suit only on the basis that the appellant/defendant had fraudulently induced the respondent/plaintiff to believe that the appellant/defendant was the owner of the land in question. Both the courts came to this concurrent finding on the basis of the evidence on record that the appellant/defendant had no transferable right in respect of the land in question and therefore, by not disclosing the same to the respondent/plaintiff he committed fraud. The substantial question Nos. (i) and (ii) stated by the appellant in his Memo of Appeal, in the considered opinion of this Court has no bearing in the outcome of the suit as well as the first appeal for the reasons stated herein above. Hence, this Court is of considered opinion that the aforesaid

two proposed substantial question of law are not involved in this case.

- 21.** As regards the substantial question of law No. (iii) stated by the appellant in his Memo of Appeal, it is submitted by the learned counsel for the appellant that the Trial Court as well as the First Appellate Court erred in concluding that the appellant/defendant had committed fraud on the respondent/plaintiff by not disclosing to him that he does not have right, title and interest of the land in question. Learned counsel for the appellant has submitted that both the Courts, namely, the Trial Court as well as the First Appellate Court have failed to consider that no ingredient of fraud as defined under Section 17 of the Indian Contract Act, 1872 was there in the instant case, more so, in view of the exception provided in Section 19 of the Indian Contract Act, 1872.
- 22.** On the other hand, the learned counsel for the caveator/respondent has submitted that before the Trial Court, in paragraph No. 4 of the plaint filed by the respondent/plaintiff, he has categorically averred that the appellant/defendant showed the respondent/plaintiff a plot of land measuring 3 Kathas at Barbari and told him that he had a right, title and interest over the land. However, this averment made by the respondent/plaintiff in his plaint, has not been categorically denied in the written statement filed by the appellant/defendant. Rather, he has made an evasive

statement in paragraph No. 24 of the written statement filed by him.

- 23.** The First Appellate Court has observed in paragraph No. 33 of the impugned judgment that the Exhibit-1 nowhere mentions that the sale consideration received by the respondent/defendant was only in respect of the possession of the land and not in respect of transferring the title of the said land. Both the Trial Court as well as the First Appellate Court made categorical findings that the appellant/defendant did not inform the respondent/plaintiff that he was selling only possessory rights as he did not have any right, title and interest over the land in question and therefore, he has committed fraud upon the appellant/defendant.
- 24.** This Court is of considered opinion that the ingredients of fraud as defined in Section 17 of the Indian Contract Act, 1872 are present in the instant case. Moreover, the appellant never took this plea before the First Appellate Court. The Trial Court as well as the First Appellate Court by after discussing the evidence on record has come to the concurrent finding that the appellant/defendant played fraud upon the respondent/plaintiff and in view of the justifications and reasoning given by the First Appellate Court for arriving at such a conclusion. In view of above, this Court is of considered opinion that the substantial question of law No. (iii) as proposed by the appellant in his Memo of Appeal is not involved in this case.

- 25.** As regards substantial question of law Nos. (iv) and (v) stated by the appellant in his Memo of Appeal are concerned, it appears that the Trial Court as well as First Appellate Court have considered the evidence on record including the testimony of PW-1, DW-1 as well as other evidence to come to the finding that the respondent/plaintiff was deceived by the appellant/defendant by making him believe that the appellant/defendant has transferable title over the land in question and thereby, convincing him to part with Rs. 6,00,000/- (Rupees Six Lakhs only) as consideration amount for the same, receipt of which has been admitted by the appellant/defendant.
- 26.** This Court is of considered opinion that by mere stating some substantial question of law in the Memo of Appeal is not sufficient for admission of the Second Appeal unless this Court is satisfied that said substantial question of law have been involved in this case.
- 27.** In this case, on perusal of the judgment of the Trial Court as well as the First Appellate Court, it would appear that both the Courts have discussed the evidence on record in detail and have come to the finding that by keeping the respondent/plaintiff in dark about the status of the land in question, a fraud was played on him by the appellant/defendant by inducing him to part with Rs. 6,00,000/- (Rupees Six Lakhs only) to the appellant/defendant, when he had no transferrable rights

over the said land. The receipt of said Rs. 6,00,000/- (Rupees Six Lakhs only) has not been denied by the appellant/defendant in this case.

- 28.** A bare perusal of the impugned judgment of the First Appellate Court as well as the Trial Court would show that both the Courts have considered and discussed the evidence on record to reach the final conclusion against each of the issues framed by the said Court. Under such circumstances, the judgments of the First Appellate Court as well as the Trial Court cannot be regarded as perverse and without application of mind by both the Courts. Rather the evidence on record have been discussed thoroughly by the Trial Court as well as by the First Appellate Court and thereby, they reached a concurrent finding against the appellant/defendant in the impugned judgments.
- 29.** This Court is, therefore, of the considered opinion that the appellant has failed to show that the substantial question of law stated by him in his Memo of Appeal are involved in this case.
- 30.** Accordingly, this Court finds that no substantial question of law as stated by the appellant in his Memo of Appeal is involved in this case and accordingly, the appeal is dismissed at the stage of admission itself without issuing notice to the respondent on the ground that no substantial question of law is involved in the instant case.

31. So, let a decree be drawn up and let the same be transmitted to the Trial Court for making it as a part of record.

JUDGE

Comparing Assistant