



GAHC010130092013

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

Case No. : CRP/208/2013

SUNIL KUMAR CHAKRABORTY
S/O LATE NALINI MOHAN CHAKRABORTY, R/O STATIONPARA,
DIBRUGARH TOWN, P.O. and P.S. AND DIST- DIBRUGARH, ASSAM

VERSUS

RAM KRISHNA SEN BURMAN
S/O LATE RAMESH CHANDRA SEN BURMAN, R/O STATION ROAD,
DIBRUGARH TOWN, P.O., P.S. and DIST- DIBRUGARH, ASSAM

Advocate for the Petitioner : MR.S K SINGH

Advocate for the Respondent : MR.R BARUAH

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri SK Singh, Sr. Advocate,

Shri P Sundi, Advocate.

Advocate for the respondent : Shri R Baruah, Advocate.

Dates of hearing : 22.09.2023 & 28.09.2023.

Date of judgment : 06.11.2023.

JUDGMENT & ORDER

The instant petition has been filed under section 115 of the Code of Civil Procedure against a judgement and decree dated 30.03.2013 passed by the learned Civil Judge, Dibrugarh in Title Appeal No. 17 of 2010 by which the judgement and decree dated 30.04.2010 of the learned Munsiff No. 1, Dibrugarh has been reversed and the suit filed by the plaintiff/petitioner has been dismissed. The primary contention of the petitioner is that the Appellate Court had reached the finding without consideration of the materials on record and the reversal has been made in a most mechanical manner by which there has been gross miscarriage of justice.

2. At the outset, it may be noted that the suit was instituted by the present petitioner for ejectment of the respondent primarily on the ground of default. The aforesaid suit was declared in favour of the petitioner by the learned Munsiff No. 1, Dibrugarh which, however has been reversed by the Appellate Court vide the impugned judgement and order dated 30.03.2013 which is the subject matter of challenge in this petition.

3. It is the case projected by the petitioner that the premises in question bears Municipal Holding No. 2120 which is in the name of the father of the petitioner and in respect of the said premises, the municipal taxes were also paid. Though the premises was initially looked after by the maternal uncle of the petitioner, on 02.08.1989, the petitioner who had attained majority by then was handed over the premises by his maternal uncle. It is the case of the petitioner

that the defendant who was a tenant in the said premises had defaulted in payment of rent. It is the further case of the petitioner that his son has become a major and therefore, there was reference to the ground of *bona fide* requirement of the premises for his son. On the other hand, the defendant had raised an objection regarding the landlord-tenant relationship. According to him, the petitioner was not the landlord.

4. Before the learned Court of the Munsiff, the plaintiff/petitioner had adduced evidence through 5 nos. of witnesses and exhibited 33 nos. of documents. The respondent was the defendant and had contested the suit by filing written statement and also adduced evidence by 1 no. of DW and also exhibited two documents, including a Lease Deed of the year 1995.

5. The learned court of the Munsiff No. 1 had framed the following issues out of which the issue No. 3 was on the aspect of landlord-tenant relationship. The issues framed are as follows:

- 1) Whether there is cause of action in the suit?
- 2) Whether the suit is bad for non-joinder of necessary parties?
- 3) Whether the defendant is tenant in respect of the suit premises?
- 4) Whether the defendant attending the suit premises?
- 5) Whether the defendant is defaulter to pay the rent for the suit premises?
- 6) Whether the plaintiff is entitled to decree prayed for?
- 7) Whether any other relief or reliefs the parties are entitled to?

6. The learned Munsiff No. 1, Dibrugarh, vide judgement and decree dated 30.04.2010 had decreed the suit in favour of the petitioner plaintiff. The Appellate Court, namely, the learned Civil Judge, Dibrugarh, vide judgement and decree dated 30.03.2013 had, however reversed the decree. With regard to the Issue No. 3, it was held that there was no landlord tenant relationship.

7. I have heard Shri SK Singh learned Senior Counsel for the petitioner whereas Shri R Baruah, learned counsel has appeared for the respondent. The LCRs produced before this Court have also been carefully examined.

8. Shri Singh the learned Senior Counsel for the petitioner has submitted that the learned Munsiff in the judgement dated 30.04.2010 had discussed all the materials on record, including the documents exhibited which were 33 nos. It is submitted that the Schedule in the plaint was consisting of one shop room and one residential room. The written statement, it is pointed out, also had a schedule which was stated to be the tenanted house of the plaintiff. The learned Senior Counsel has also referred to the proceedings leading to a Local Inspection which was ordered on 04.11.2006, on an application for inspection made on 07.09.2006. The report of the Local Inspection was given on 03.12.2006 and the said report was duly taken into consideration by the learned Munsiff. However, it is submitted that the Appellate Court did not even consider the said report. Shri Singh submits that the finding of the inspection report matches with the schedule of the plaint.

9. The learned Senior Counsel has submitted that the Municipal Holding of the



premises is in the name of the petitioner/plaintiff and it is based on this Holding that electric electricity connection has been given and there is no denial of any kind in the written statement of the defendant.

10. As regards Exhibit-A which was produced by the defendant, the learned Senior Counsel submits that the same is an unregistered lease deed of the year 1995. As per the same, the lease is existing since the year 1970 given by one Sachchitanand Pandey in favour of the defendant. It is submitted that the said document was a manufactured one which was done only to defeat the cause of justice. It is also submitted that even assuming for arguments sake that if there was a lease existing from 1970 in favour of the defendant from Sachchitanand Pandey wherein a residential house has been constructed, there should have been a specific Holding Number of the house in the name of the defendant and also the electricity connection should be in the name of the defendant or at least of his lessor.

11. By referring to the evidence, more specifically, the cross-examination of the DW1, the learned Senior Counsel has submitted that the findings of the Appellate Court are perverse. It is submitted that the Appellate Court had overlooked/ignored relevant materials, including the Memo of Local Inspection, the exhibits produced by the plaintiff including Exhibit-11 which is a letter from one Madon, non-denial of the fact that electricity connection is in the name of the plaintiff and also the fact that there is no Municipal Holding in the name of the defendant. It is submitted that the entire impugned judgement is based on Exhibit-A which is itself a doubtful document. It is also submitted that on reading of the said Exhibit-A, it would be apparent that the lease was of land,

and not of any premises. However, it is submitted that the suit was for ejectment of premises and to claim ownership over the said premises, the defendant ought to discharge the minimum burden to show any documentary evidence regarding claim of such ownership like Municipal Holding and electricity connection.

12. In support of his submission, the learned Senior Counsel has relied upon the case of ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta***, reported in **AIR 1999 SC 2507**. The learned Senior Counsel reiterated that the ejectment sought for was only in respect of two rooms, namely, one shop room and one residence which were specifically mentioned in the Schedule to the plaint and are not connected with the Schedule of Exhibit-A which is a plot of land measuring 7 lechas.

13. Defending the impugned judgement of the Appellate Court, Shri R Baruah, the learned counsel for the respondent has submitted, at the outset that the powers to be exercised by this Court under Section 115 of the Code of Civil Procedure is a restricted one wherein, this Court may not embark upon appreciation of the evidence afresh. It is submitted that only under limited grounds, a Revisional Court may interfere with the findings of the subordinate court and in this case, there is no scope of such interference.

14. Shri Baruah, the learned counsel for the respondent has submitted that the petitioner is not the landlord and rather, is a stranger and has instituted the suit with an ulterior motive. By referring to the written statement, the learned counsel for the defendant/respondent has submitted that in the year 1970, the

defendant had taken lease of the plot of land from Sachchitanand Pandey. It is submitted that amongst the seven issues framed by the learned Munsiff, the issue of *bona fide* requirement was not there. The learned counsel has, however submitted that there was an earlier appeal and the learned Appellate Court vide judgement dated 17.12.2008 had remanded the matter to the learned court of the Munsiff on the issue of *bona fide* requirement. The said issue has, however been decided against the plaintiff by the learned Munsiff in the judgement dated 13.04.2010.

15. Sri Baruah, the learned counsel for the respondent by referring to the cross-examination of the PW1 has submitted that there is no document of any rent agreement. He submits that the PW1 had also conceded that the municipal bill/electricity bill was not in his name and Shri Nirmal Chakraborty had handed over the possession to the plaintiff.

16. By drawing the attention of this court to the cross-examination of PW2, Shri Nirmal Chakraborty, it is submitted by Shri Barua, the learned counsel that the said PW2 had stated that he is not aware of the contents of his chief examination. He further submits that reference to two other persons, namely Bachu Sharma and Madon Sharma were not part of the pleadings and therefore, cannot be raised. It is submitted that the findings of the First Appellate Court is proper and in accordance with law and therefore, the same do not warrant any interference.

17. In support of the preliminary submissions regarding the limited powers of a Revision Court, Shri Baruah, the learned counsel for the respondent has relied

upon the case of **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh**, reported in **(2014) 9 SCC 78**.

18. In the case of **Dilbahar Singh** (*supra*), the Hon'ble Supreme Court has laid down as follows:

"43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on

facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

19. Rejoining his submission, Shri Singh, the learned Senior Counsel for the petitioner has submitted that the ejectment sought for was only in respect of two rooms, namely, one shop house and one residence and was not connected to the plot of land in the Schedule of Exhibit-A. So far as the names in the electricity bills, it is submitted that the valid document by which Nirmal Chakraborty had handed over the property to the plaintiff was exhibited as Exhibit-13 and the said Nirmal Chakraborty had himself adduced evidence as PW2 and therefore, there was no doubt/confusion with regard to the status of the plaintiff. With regard to the submission that certain evidence in connection with two individuals, Bachchu Sharma and Madon Sharma were not part of the pleadings, the learned Senior Counsel has referred to paragraph 6 of the plaint in which there are specific pleadings with regard to the said individuals and also with regard to the subject matter involving one residence and one shop room. It is also submitted that when the said Bachu Sharma had vacated the present premises, the defendant had shifted to this room which was more convenient.

20. With regard to the names in the Municipal Holding, the learned Senior Counsel has submitted that Exhibits 9 and 10 would establish that though the name in the Municipal Holding was initially of Nirmal Chakraborty, the same was later substituted by the name of the petitioner/plaintiff. It is submitted that the



defence taken that the land was taken on lease by the defendant from one Aayodhya and Sanju Sharma are within the ambit of the Non-Agriculture Urban Area Tenancy Act, 1955 whereas the instant case is a dispute regarding two rooms, and the ejectment is sought under the Urban Areas Rent Control Act, 1972. By drawing specific attention to Sections 2 (c) and 2 (f) of the Act of 1972, Shri Singh, learned Senior Counsel has submitted that the concept of landlord and tenant are in respect of 'house' and not land. Dealing with the objection that the plaintiff himself was a tenant, Shri Singh, the learned Senior Counsel has submitted that such objections are not substantiated by any evidence and if the version of the respondent/defendant that he had constructed the rooms in the year 1970 are to be accepted, the Holding number should have been in the name of the defendant. The learned Senior Counsel has also reiterated that Exhibit-A which is admittedly a document of the year 1995 was manufactured only for the purpose of the case. By drawing the attention of this Court to the Memorandum of Inspection which was done in presence of both the sides, the learned Senior Counsel has submitted that the said inspection had to be done as the Schedules in the plaint as well as in the written statement had differed and in the inspection, it was found that it is the Schedule of the plaint which tallies. He has submitted that the aforesaid Memorandum of Inspection which was done pursuant to the order dated 04.11.2006 of the Trial Court was not a matter of challenge. It was further submitted that Exhibit-11 which is a document by the elder brother of the defendant was not objected to. It is submitted that the Appellate Court had ignored all these materials on record and had relied only on Exhibit-A which was adduced by the defendant. Shri Singh further pointed out that in the entire written statement, there is no reference to any lease deed of 1995 which was exhibited as Exhibit-A and

therefore, the said document, otherwise also could not have been taken into consideration.

21. The rival submissions made by the learned counsel for the parties have been duly considered and the materials, including the LCR have been carefully examined.

22. Let us first deal with the preliminary objection on the powers to be exercised by this Court under Section 115 of the CPC. The powers of revision conferred upon this Court by the aforesaid section are to be exercised broadly on the following conditions:

- i) That the order has been passed by a person not vested with jurisdiction;
- ii) That there has been denial of exercise of jurisdiction conferred by law;
- iii) That the order passed is not based on relevant materials on record;
- iv) That the order is based on irrelevant materials and extraneous considerations;
- v) The conclusion arrived at is perverse to the materials and evidence on record.
- vi) After the amendment of the CPC, there is another embargo inserted that the order impugned, if would have passed in favour of the party approaching the Court would have finally disposed of the

matter.

23. This Court also cannot be oblivious of the fact that under the Urban Areas Rent Control Act, there is no provision for filing a second appeal, unlike any ordinary civil dispute instituted under the Code of Civil Procedure. Under such conditions, even though the powers of revision are to be exercised with circumspection, a dispute of the present nature under the Urban Areas Rent Control Act is to be dealt with in a manner wherein the objective of the Court should be to secure the ends of justice according to law. Of course, this Court cannot traverse beyond the contours laid down for exercise of such powers which already have been noted above.

24. In the instant case, the preliminary objection by the defendant was denial of the landlord tenant relationship. As per the materials on record, such denial was based upon a projection that the land in question was taken on lease in the year 1970 by the defendant from one Sachitanand Pandey. In support of the said defence, the defendant had adduced a lease deed of the year 1995 which was marked as Exhibit-A. However, a close perusal of the said Exhibit-A would show that the same was an unregistered deed. Notwithstanding the aspect of registration, the lease was for a plot of land and not for any house and therefore, this Court finds force in the submission made on behalf of the petitioner that the aforesaid lease, even if its authenticity is not doubted, it has to be considered to be one under the provisions of the Non-Agricultural Urban Area Tenancy Act, 1955. However, the present suit was instituted not against eviction from the plot of land but for ejectment from two rooms, namely, one shop room and one residence and was under the Assam Urban Areas of Rent

Control Act, 1972. As rightly pointed out by Shri Singh, under Sections 2 (c) and 2 (f) of the Act of 1972, the concept of 'landlord' and 'tenant' are in respect of houses. For ready reference, the aforesaid provisions are extracted hereinbelow:

*"2(c). **Landlord** means any person who is, for the time being receiving, or entitled to receive rent in respect of any house, whether on his own account, or on account, or on behalf, or for the benefit of any other person, or as a trustee, guardian, or receiver, for any other person, and includes in respect of his own sub-tenant, a tenant who has sub-let any house and includes every person not being a tenant who from time to time derives title under a landlord."*

*"2(f) **Tenant** means any person by whom or on whose behalf rent is payable for any house and includes every person who from time to time derives title under a tenant."*

25. Dealing with the objection that in the cross-examination, the PW 1 had stated that the electricity bills and municipal bills were not in his name and it was also highlighted that the PW2 had fumbled in his cross-examination, such objection will not stand as it was the admitted case that initially when the petitioner was a minor, his maternal uncle Nirmal Chakraborty had looked after the property and the Municipal Holding No.2120 was renumbered as 81. Further, vide Exhibit-13, Nirmal Chakraborty had handed over the property to the plaintiff. What is more important is that doubt, if any, has been totally obliterated by the fact that the said Nirmal Chakraborty had himself adduced evidence as PW2 in favour of the plaintiff. Further, the definition of landlord as

per the Act of 1972 is an inclusive definition which includes any person authorised to receive rent.

26. This Court has also noticed that under Exhibits 8 and 9, it becomes clear that the Holding number was subsequently substituted by the name of the petitioner-plaintiff and therefore, his status as the landlord cannot be denied. What is also intriguing is that the defendant could not even remotely show any document to establish that the house which had Municipal Holding number and the electricity connection were in the name of the defendant. Rather, the specific case of the plaintiff could not be rebutted by the defendant.

27. As regards the aspect of the Local Inspection Report dated 03.12.2006, this Court has noticed that the learned Munsiff had passed an order dated 04.11.2006 for such local inspection in view of the fact that the Schedules in the plaint and the written statement were not tallying. In the Memorandum of Inspection dated 03.12.2006, it was however, found that the Schedule given in the plaint was the actual Schedule and the said Memorandum of Inspection was not the subject matter of any challenge. This Court has noticed that the Appellate Court did not even take into consideration the aforesaid Memorandum of Inspection. This Court has also noticed that Exhibit-11 which was a letter written by one Shri Madan, the brother of the defendant was not objected to and from the contents of the said letter, the version of the plaintiff is substantiated.

28. In the case referred by the petitioner of ***Shiv Sarup Gupta*** (*supra*), the Hon'ble Supreme Court has held that in case of perversity, a Court exercising

powers of revision can interfere. In the said case, the Hon'ble Court was considering the aspect of Section 25-B of the Delhi Rent Control Act, 1958 read with Section 115 of the CPC. For ready reference, the relevant aspect of the judgement is extracted hereinbelow:

"11. ... Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is for the purpose of satisfying if an order made by the Controller is according to law. The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law."

29. The materials on record, without any manner of doubt, establish that rent



was not paid by the defendant to the plaintiff. In fact, such non-payment is also admitted by the defendant who had taken the ground that the plaintiff/petitioner is not the landlord. This Court having found that such objection regarding non-existence of landlord-tenant relationship being not tenable and which was rightly arrived at by the learned Munsiff, the ground for ejectment on the basis of defaulter in payment of rent is established. That being the position, this Court is of the view that the judgement and decree of the learned Munsiff dated 30.04.2010 is to be sustained and the judgement and decree of the Appellate Court dated 30.03.2013 is accordingly set aside.

30. The revision petition accordingly stands allowed.

31. No orders as to cost.

32. The records are returned back.

JUDGE

Comparing Assistant