



GAHC010217182021

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

Case No. : CRP/95/2022

BASUDEV NEWAR AND ANR
S/O LATE DHANBIR NEWAR
R/O KAMAR CHUBURI, NEAR VARTAK OFFICE MESS, TEZPUR TOWN,
MOUZA-MAHABHAIRAB, P.S.- TEZPUR, DISTRICT- SONITPUR, ASSAM,
PIN-784501
2: SMT RINA KALITA
W/O SRI BASUDEV NEWAR
R/O KAMAR CHUBURI
NEAR VARTAK OFFICE MESS
TEZPUR TOWN
MOUZA-MAHABHAIRAB
P.S.- TEZPUR
DISTRICT- SONITPUR
ASSAM
PIN-78450
VERSUS
JESMIN BORAH AND 2 ORS (A)
W/O LATE BIBEK BORAH
R/O KHARA-ATI, TEZPUR, MOUZA-BHAIRABPAD, P.S- TEZPUR, DISTRICT-
SONITPUR, ASSAM, PIN-784501
2:SRI VIKRAMJIT BORAH
S/O LATE BIBEK BORAH
R/O KHARA-ATI
TEZPUR
MOUZA-BHAIRABPAD
P.S- TEZPUR
DISTRICT- SONITPUR
ASSAM
PIN-784501
3:SMT TRIDISHA BORAH
D/O LATE BIBEK BORAH
R/O KHARA-ATI
TEZPUR
MOUZA-BHAIRABPAD
P.S- TEZPUR



DISTRICT- SONITPUR
ASSAM
PIN-78450

Advocate for the Petitioner : MR. B CHAKRAVARTY

Advocate for the Respondent : MR. P SUNDI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

Date : 31/10/2022

Heard Mr. B.Chakravarty, the learned counsel appearing on behalf of the Petitioners and Mr. P. Sundi, the learned counsel appearing on behalf of the Respondents.

2. This is an application under Section 115 of the Code of Civil Procedure, 1908 challenging the judgment and decree dated 19/12/2008 passed by the Court of the Munsiff No. 1, Tezpur challenging the judgment and decree dated 10/2/2020 passed by the Court of the Civil Judge, Tezpur, Sonitpur, in Title Appeal No. 6/2016 whereby the said appeal was dismissed thereby affirming the judgment and decree passed in Title Suit No.68/2011.

3. For the purpose of disposal of the instant petition the parties herein as referred to in the same status as they stood before the Trial Court.

4. The facts of the instant case are that the plaintiffs herein had instituted a Title Suit being Title Suit No.68/2011 praying inter alia for delivery of possession



of the suit house and premises described in the Schedule to the plaint by evicting the Defendants, their men and materials there from ; for a decree for recovery of Rs.18,000/- being the arrear of rent of the suit house and premises to the Schedule for the period 01/08/2008 to 31/7/2011 against the Defendants ; cost of the suit etc. It has been alleged in the plaint that the Plaintiffs are the owners of the suit house more as described in the plaint The Defendants were originally the tenant of one Kiron Bala Borah who died on 10/6/2004 and her husband predeceased her and expired on 13/6/1994. Late Bibek Borah and Late Pranab Bora were the sons of Late Kiron Bala Borah and the suit house along with the land upon which the suit is standing came to the share of the Plaintiffs being the legal heirs of Late Bivek Borah. It is the further case of the Plaintiffs that the Plaintiff No.1 had transferred by way of sale a part of the said total plot of land measuring 1 katha with one Assam Type House standing thereon under Holding No. 1036 to one Raj Lakhmi Basumatary vide registered Sale Deed No. 986/2010 dated 11/6/2010 due to their financial hardship. The suit premises is situated on the remaining portion of land retrieved by the Plaintiffs. During the life time of late Kiron Bala Borah, the monthly rent house of the suit premises was Rs.500/- per month as per verbal agreement. But after the death of Late Kiron Bala Borah, the Defendants defaulted to pay the monthly rent of Rs.500 to the Plaintiffs, although they were



aware of the fact that after the death of late Kiron Bala Borah the Plaintiffs became the owner of the suit house and the premises. It has been further alleged that on 17/12/2010 when the Plaintiff No. 1 demanded payment of rent, the Defendant No. 1 drove her out from the campus of the suit premises and threatened her to be killed if she would approach again for payment of rent and due to such incident, the Plaintiffs had lodged an FIR before the police. After transferring of the house and the premises to Raj Lakshmi Basumatary, the Plaintiffs were compelled to reside in the rented house at Khara Ati at Tezpur having no alternative. Hence the suit house and the premises were required for bona fide requirement. Under such circumstances, the Plaintiff had issued a legal notice dated 25/7/2011 but the defendants refused to accept the same. It is under such circumstances that the suit was filed seeking the reliefs as already stated hereinabove.

5. The Defendants, on the other hand, filed their written statement stating inter alia that the suit premises and the suit land were not partitioned and the Plaintiffs did not implead the other pattadars due to which the suit became bad for non-joinder of necessary party. The Defendants further denied any sale of any house or plot to Raj Lakshmi Basumatary by the Plaintiffs. It was further stated that on 29/7/2008 the Plaintiffs executed one agreement for sale concerning to a plot of land measuring 1 katha covered by Dag No 620 of



Periodic Patta 416 situated at Kamarchburi, Tezpur in favour of the Defendant No. 2 for total sale consideration amounting to Rs. 7,00,000/-, out of which Rs. 3,66,000/- have been received by the Plaintiff No. 2 for other Plaintiffs. The said agreement for sale is executed in presence of two witnesses and the Defendant No. 2 had made a counter claim concerning the said plot of land along with a prayer for cancellation of the alleged Sale Deed. It was further stated that on execution of the Deed of Agreement for Sale, the defendants were in possession of the said land and structures standing thereon and Plaintiffs have been seeking time to execute the registered sale deed for the said land and structures standing thereon. Hence there was no question of existence of tenancy amongst the plaintiffs and the defendants. It was also mentioned that the defendants had cleared all the rent to the said house structures on the date of the agreement for sale to the said plot of land. It was mentioned that on 17/12/2012, when the Defendant No. 1 again requested the Plaintiff No.1 to execute the registered Sale Deed, then the Plaintiff No. 1 with some unknown persons wrongfully trespassed into the house of the Defendants and threatened the Defendants for dire consequences and also tried to evict them for which, the defendant No. 2 had lodged the complaint case. It is under such circumstances, the Defendant prayed for dismissal of the suit of the Plaintiffs with compensatory cost of Rs. 3,000/- as per the provisions of Section

35 (A) of the CPC. It is reiterated that the defendants had also filed the counter claim for cancellation of the Sale Deed executed on 11/6/2010 by the Plaintiff in favour of Raj Laksmi Basumatary by the Sale Deed No.1145 registered before the Sub-Registrar, Tezpur to the plot of land measuring 1 katha which is part and parcel of the Schedule land. It is however relevant to take note of that at the latter stage of the suit the Defendants had withdrawn the counter claim with liberty to file a fresh suit before the Court. Nothing however has been brought to the attention of this Court as to whether any suit was filed by the Defendants pursuant to the liberty taken

6. On the basis of the pleadings, as many as 7 issues were framed which for the sake of convenience are reproduced below :-

- (1) Whether the suit is maintainable ?
- (2) Whether the suit is hit by principles of waiver, acquiescence and estoppel ?
- (3) Whether the suit is barred by limitation ?
- (4) Whether the suit is bad for non-joinder of necessary party ?
- (5) Whether there is any tenancy agreement between the defendants and the plaintiff ?
- (6) Whether the defendants are defaulters ?
- (7) Whether the plaintiffs are entitled to get the decree as prayed for ?

7. In support of the claim of the Plaintiffs, they had adduced the evidence of 3 witnesses and exhibited 8 numbers of documents whereas the Defendants



also adduced the evidence of 5 number of witnesses and exhibited 3 documents.

8. The issue No. 5 which pertains to as to whether there was any tenancy agreement between the Defendants and the Plaintiffs, the Trial Court after taking note of the evidence on record came to a finding that there was a tenancy which existed between the plaintiffs and the defendants. In respect to issue No. 6 as to whether the Defendants were defaulters in payment of rent, it was held that as the Defendants failed to prove the agreement for sale and there was no evidence adduced as regards payment of rent for which the Defendants were held to be defaulters in payment of rent. On the basis thereof, the suit was decreed vide the judgment and decree dated 19/12/2018.

9. Being aggrieved and dissatisfied, the Defendants as appellants preferred an appeal before the Court of the District Judge, Sonitpur, Tezpur which was registered and numbered as Title Appeal No. 6/2019. The First Appellate Court after taking note of the Plaintiff's case, the Defendants' case, the issues and the grounds of objections in the appeal, framed as many as 4 points of determination. The First Appellate Court while deciding those points of determination took note of the findings of the Trial Court as regards the issue Nos. 5 & 6 and came to a finding that the Defendants/the Appellants were



tenants of the Respondent/Plaintiff and the Defendants were defaulters in respect to payment of monthly rent to the Plaintiffs and on the basis of that have affirmed the decision of the Trial Court as regards issue Nos. 5 and 6. The First Appellate Court vide the judgment and decree dated 10/02/2020 dismissed the appeal by affirming the judgment and decree passed by the Trial Court.

10. It is against this concurrent findings arrived at by the Courts below and the decree passed in favour of the Plaintiffs that the instant application has been filed under Section 115 of the CPC. In the backdrop of the above facts, let this Court take into consideration the respective submissions made by the learned counsel for the parties.

11. The learned counsel for the Petitioner, Mr. B. Chakraborty has submitted that the Court below failed to take into consideration the scope and ambit of the agreement for sale dated 29/7/2008 and thereby exercised the jurisdiction illegally and with material irregularity and as such this is fit case for interference under Section 115 of the CPC. The learned counsel submitted that if the Court below would have taken the agreement for sale in proper perspective, the issue No. 5 would have been decided against the plaintiffs which pertains to as to whether there was a landlord-tenant relationship and consequently the findings as regards the defaulter could not have been arrived at by both the Courts



below.

12. On the other hand, Mr. P.Sundi, the learned counsel for the Respondents submitted that the agreement for sale dated 29/7/2008 was not proved in accordance with law and moreover when an agreement for sale claiming rights under Section 53A of the Transfer of Property Act, 1882(for short the Act of 1882 under the agreement for sale), the same has to be in compliance with Section 17 (1A) of the Registration Act, 1908. He submits that admittedly the alleged agreement for sale dated 29/7/2008 was not a registered document and as such the same was not admissible in law for the purpose of claiming rights under Section 53A of the Act of 1882 and consequently the Defendants were not entitled to any benefits on the basis of the said alleged agreement. The learned counsel further submitted that even assuming for argument sake there is an agreement for sale, the same does not determine the landlord-tenant relationship and duty and obligation of the tenant continues till a valid execution of a deed of sale. Referring to Section 54 of the Act of 1882 the learned counsel for the Respondent submits that an agreement for sale is nothing but only a document on the basis of which a party is entitled to claim execution of a document. Even assuming the said agreement for sale dated 29/7/2008 is a valid document, it is simply a contract that a sale of such property shall take place on terms settled between the parties and shall not carry interest or any



charge on the property. At this stage, it may also be relevant to take note of the specific submission made by the learned counsel for the Petitioner wherein he referred to the proviso to Section 49 of the Registration Act, 1908 (for short the Act of 1908) whereby he submitted that the said agreement for sale dated 29/7/2008 may not be admissible in evidence in so far as Section 53A of the Act of 1882 is concerned but the same may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be affected by a registered instrument.

13. I have heard the learned counsel for the parties and have also perused the materials on record.

14. The finding that there is a landlord tenant relationship between the Plaintiff and the Defendants is a finding of fact arrived at by both the Courts below. The question only which needs to be looked into is as to whether the benefit under Section 53A of the Act of 1882 can be given to the Defendants in the facts of the instant case and if the said benefit can be given, then the Defendants cannot be evicted by the Plaintiff in view of Section 53A of the Act of 1882. For that purpose, it is therefore, important to take note of that as to whether the agreement dated 29/7/2008 can be taken into account for the purpose of Section 53A of the Act of 1882 or for that matter as to whether the



said agreement would be admissible in evidence in view of the provisions of Section 49 of the Registration Act, 1908. The Registration and Other Related Laws (Amendment) Act, 2001 had amended the Registration Act of 1908 by inserting a provision i.e. Section 17(1A) to the Registration Act of 1908. The said provision being relevant is quoted hereinbelow :-

“17(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”

15. A perusal of the said provisions would go to show that documents containing contract to transfer for consideration, any immovable property for the purpose of Section 53A of the Act of 1882 shall be registered if they had been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement, then they shall not effect for the purpose of Section 53A of the Act of 1882. Now if this Court takes into consideration Section 49 of the Act of 1908, it stipulates the effect of non-registration of a document required to be registered. As it would be seen from Section 17(1A) of the Act of 1908 that a contract for sale for which benefit under Section 53A of the Act of



1882 is to be taken, it is required to be registered. Therefore, the proviso to Section 49 would have no application to give the benefit under Section 53A of the Act of 1882 to the Defendants. On a further perusal of Section 49 of the Act of 1908, it would be seen that if a document is required to be registered is not registered, the same shall not affect an immovable property comprised therein or confirmed any power to adopt or be received as evidence of any transaction affecting such property or confirming such power. Therefore, upon a conjoint reading of Section 17 (1A) with Section 49 of the Act of 1908, this Court is of the opinion that both the Courts below have rightly not taken into consideration the agreement dated 29/7/2008 as the same was not admissible in law. The proviso to Section 49 of the Act of 1882 could only be available for the purpose of a suit for specific performance or as evidence of any collateral transaction not required to be effected by a registered instrument but taking into account that Section 17(1A) categorically mandates that a document has to be registered, the submission of Mr. B. Chakravorty, the learned counsel appearing on behalf of the Petitioner is therefore totally misconceived. Under such circumstances, this Court is of the opinion that the issue No. 5 had been rightly decided by the Court below.

16. This aspect of the matter can be also seen from another angle. Mr. P.Sundi, the learned counsel for the Respondent submitted that merely entering



into an agreement for sale does not end the jural relationship of landlord and tenant and it continues till it is determined in accordance with law. The learned counsel for the Respondent has also drawn the attention of this Court to the judgment of the Supreme Court rendered in the case of **H.K. Sarma Vs. Ram Lal**, reported in **(2019) 4 SCC 153** wherein the Supreme Court observed that the jural relationship of a landlord and tenant did not result in determination on account of the execution of an agreement for sale. The learned counsel refers to paragraph Nos. 22, 23, 30 and 33 of the said judgment.

17. A perusal of Section 54 of the Act of 1882 defines what is a contract for sale thereby meaning that a contract for sale of an immovable property is a contract that a sale of such property shall take place on terms settled between the parties. The said contract for sale does not of itself, create any interest or charge in such property. Therefore, the agreement upon which the petitioners/the defendants rely upon is merely a contract for sale. It neither ends the jural relationship between the plaintiff and the Defendants nor absolves the tenant to discharge his obligation as required under law. Therefore, the tenant unless he proves the determination of the landlord-tenant relationship would continue to remain liable to perform his obligations as per the provisions of the Assam Urban Area Rent Control Act, 1972. In that view of the matter, this Court is therefore of the opinion that as admittedly the Defendants



have not proved payment of rent, the Courts below were therefore justified in passing the judgment and decree in favour of the Plaintiffs.

18. Under such circumstances, the judgment and decree dated 10/2/2020 passed by the Court of the Civil Judge, Tezpur, Sonitpur in Title Appeal No. 6/2016 whereby the said appeal was dismissed thereby affirming the judgment and decree passed in Title Suit No.68/2011 does not call for any interference.

19. Taking into consideration that the defendants have been residing in the suit premises since more than a decade and Mr. B. Chakraborty, the learned counsel appearing for the petitioners/Defendants submitted that if the defendants are immediately evicted, serious irretrievable injury would be caused as it would be very difficult to immediately find an alternative location, it would be just and reasonable to grant them six months of time to vacate the suit premises provided that they submit an undertaking before the Trial Court within 17/11/2022 to the effect that they shall vacate the suit premises within a period of six months from the date of the instant judgment i.e. on or before **30/04/2023**.

20. It is clarified that during this period of six months the Defendants shall continue to make payment of amount of Rs. 1,000/- per month in the form of compensation to the plaintiffs.



21. It is further observed that granting of extension of the period of six months subject to filing undertaking as aforesaid and the payment of compensation of Rs. 1,000/- per month during this period of six months shall not create any right or interest in favour of the Defendants in respect to the suit premises. It is also clarified that during this period, the Defendants shall remain in possession of the suit premises as the custodian of the plaintiffs and shall not do any act or acts which may effect the rights of the plaintiffs over the suit premises in any manner whatsoever.

22. The Respondents herein shall be entitled to rent for the period of the eviction proceedings either through adjustment from the rent already deposited in the Court or by making an application before the Executing Court to decide on their entitlement of the rent during the pendency of the eviction proceedings and the Executing Court would permit the tenants/petitioners herein to controvert the allegations of non-payment of rent during the pendency of the eviction proceedings and thereupon decide the same in accordance with law.

23. With the above observation, the instant petition stands dismissed.

Comparing Assistant

JUDGE