

Sashi Kanta Ruia

Vs

M/s. Indo Minerals & others etc.

Civil Appeal No. 3077 of 2000 etc.

(Mr. G.B. Pattanik and Mr. U.C. Banerjee, JJ.)

01.08.2000

JUDGMENT

G.B. Pattanaik, J.:— Both these appeals are directed against a common judgment of a learned Single Judge of Calcutta High Court, disposing of the two Second Appeals namely Second Appeal No. 331 of 1997 and Second Appeal No. 482 of 1996. Second Appeal No. 331/97 was by the defendants in Title Suit No. 64/84 and the said suit had been filed for eviction of the defendants and for recovery of possession, and the suit had been dismissed by the Trial Judge. On appeal being carried, the Lower Appellate Court allowed the appeal, decreeing the plaintiff's suit. Defendants approached the High Court in Second Appeal and the High Court by the impugned Judgment, set aside the judgment and decree of the lower Appellate Court and affirmed the judgment and decree of the Trial Judge and the plaintiffs are the appellants in the civil appeal in question. The other civil appeal arises out of the Title Suit No. 116/80. The said suit also having been dismissed by the Trial Judge, the matter was carried in appeal by the plaintiffs in lower Appellate Court and the Assistant District Judge, Sealdah, allowed Title Appeal No. 144/89, thereby decreeing Title Suit No. 116/80. Defendants carried the matter to the High Court in Second Appeal No. 482/96 and by the impugned judgment, the High Court was of the opinion that the suit itself was not maintainable and accordingly, allowed the second appeal and dismissed the suit.

The suit for eviction was based on the ground that the land in question had been taken under a lease deed for a period of 15 years with a right to sub-lease, by the father of the plaintiff. In view of the terms of the lease deed, defendants 1 and 2 had been given the sub-lease and they having failed to pay rent, money suit had been filed for realisation of the rent. Subsequent, suit for ejection had been filed and stood disposed of on the terms of agreement and in accordance with the said terms, plaintiff took over the possession and became the lessee w.e.f. 1.2.79. The sub-lease of the defendants has been determined w.e.f. November, 1978 but notwithstanding the same, the defendants forcibly occupied and, therefore, the possession is that of trespasser. The plaintiff thus filed the suit for eviction. The contesting defendants denied the rights of the plaintiff and contended that they had become lessee under the original lessor and not sub-lessee as contended in the plaint. According to them, the period of lease in favour of plaintiff's father, having expired and there being no material to establish that the defendants were inducted as sub-lessee under the lessee, the plaintiff has no right to file suit for eviction and, therefore, the suit must be dismissed. The learned Trial Judge on an analysis of the evidence on record, came to the conclusion that the plaintiff did not acquire any right over the land but only on the structure and defendants became lessee under the original lessor. The Trial Judge found that the status of the defendants is that of a trespasser, but yet in the absence of any evidence that plaintiff had sub-let the land to the defendants, suit for eviction will not lie. With these conclusions, the suit having been dismissed, the matter had been carried in appeal to the lower Appellate Court. The Lower Appellate Court on consideration of the materials

on record, came to the conclusion that the basic approach of the Trial Judge on the pleadings of the parties was wholly erroneous. According to the lower Appellate Court, the earlier decree of the Civil Court, awarding damages against the defendants for unauthorised occupation, unequivocally establishes the fact that the defendants have no right to be on the land. The lower Appellate Court also came to the conclusion that in view of the terms of the sub-lease, the suit for sub-lease expired on 31.12.1978 and defendants cannot claim any interest subsequent to the same. The lower Appellate Court also came to the conclusion that the creation of sub-lease in favour of the defendants could not have conferred a better right, which the lessee himself did not have and also came to the conclusion that question of defendants' acquiring 'Thika tenancy' really does not arise. With these conclusions, the lower Appellate Court reversed the judgment and decree of the Trial Judge and decreed the plaintiff's suit for eviction. The High Court in the second appeal, curiously did not focus its attention to the findings arrived at by the lower Appellate Court but abruptly jumped to the conclusion that the tenancy in favour of the plaintiff is not in respect of the portion of land in possession of the defendants but some other portion, which case has not been made out by the defendants themselves in their written statement. The High Court also came to the conclusion that a case of surrender not having been made out in the plaint, the lower Appellate Court was in error that defendants surrendered their possession after expiry of sub-lease on 31.12.1978. Ultimately, the High Court came to the finding that the plaintiff, not having acquired any right over the disputed property, the suit for eviction will not lie, even though the defendants may be held to be trespassers. In the other suit, on the identical question, the High Court also held the suit for eviction to be not maintainable.

Mr. V.A. Mohta, the learned counsel, appearing for the plaintiff in Civil Appeal arising out of S.L.P. (C) No. 8493/99 and Mr. Dipankar P. Gupta, the learned senior counsel appearing for the plaintiff in civil appeal arising out of S.L.P. (C) No. 8495/99 contended with force that the High Court committed serious error in coming to the conclusion that the lease in favour of the plaintiff was only for the structure. The learned counsel also further contended that in coming to the conclusion that the tenancy must have been in respect of some other portion of the land and not in respect of the portion in possession of the defendants, the High Court has not considered the pleadings and findings of the lower Appellate Court on that score but on the basis of surmises and conjectures, which the second Appellate Court is not entitled to do. According to the counsel, appearing for the plaintiffs-appellants, the High Court was also in error in dismissing the plaintiff's suit on a finding that plaintiffs have no better title than the defendants. It was urged that the lower Appellate Court, which is the final Court of fact, having considered the materials on record and having recorded positive findings on the different questions, the High Court could not have interfered with the judgment and decree of the lower Appellate Court, without even discussing the same.

Mr. S.B. Sanyal, the learned senior counsel, appearing for the defendants-respondents, on the other hand contended that though apparently, there appears to be some force in the contentions of the learned counsel, appearing for the appellants but there were sufficient materials for the High Court to interfere with the ultimate findings of the lower Appellate Court, and therefore, at the most the two second appeals may be remitted to the High Court for reconsideration and this court should not finally dispose of the appeals. We have carefully considered the rival contentions as well as the judgment and decree of the lower Appellate Court in both the suits and the impugned judgment of the High Court in the two second appeals, which were heard together and disposed of by a common judgment. A bare perusal of the impugned judgment of the High Court would indicate that the Court has not considered the relevant pleadings and the findings arrived thereon after appreciation of the evidence by the lower Appellate Court and on the other hand, the High Court has straight-away by surmises and conjectures, interfered with the conclusions on the question of facts arrived at by the

lower Appellate Court. We really fail to understand as to how the High Court would record a finding that the tenancy of the plaintiff was in respect of the structure and not the land and further the lease in favour of the plaintiff was in respect of the land other than the land on which the defendants had the possession. Having considered the judgment of the lower Appellate Court in both these cases, we have no hesitation to come to the conclusion that the said lower Appellate Court has recorded findings on the materials on record and the conclusions arrived thereunder cannot be said to be erroneous in any manner. In this view of the matter, we see no justification for remitting the second appeals to the High Court again for re-disposal. In our view, the High Court committed serious error in interfering with the judgment and decree of the lower Appellate Court in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure. We, accordingly, set aside the impugned judgment of the High Court in the second appeals and affirm the judgments & decrees of the lower Appellate Court and decree the suits.

The Civil Appeals are accordingly allowed but there will be no order as to costs.