

(1976) 07 GAU CK 0002

Gauhati High Court

Case No: None

M. Gulap Singh and
Others

APPELLANT

Vs

The Union of India
(UOI) and Others

RESPONDENT

Date of Decision: July 7, 1976

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8

Citation: AIR 1977 Guw 41

Hon'ble Judges: D. Pathak, J; Baharul Islam, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Baharul Islam, J.

This appeal is by the plaintiffs, who lost in both the Courts below.

2. The plaintiffs numbering 10 brought the suit under Order 1, Rule 8 of the Code of Civil Procedure, on behalf of themselves and the inhabitants of their village, Taothong, for declaration that they had acquired right of pasturage over the suit land by custom. Their case was that the land in suit had been allotted by Government (defendant No. 2) to defendant No. 3, Messrs Himalayan Tiles and Marbles Private Ltd. They have further prayed for declaration that the allotment of the suit land to defendant No. 3 by defendant No. 2 was null and void.

3. The defendants Nos. 1 and 2, who are respectively the Union of India and the Government of Manipur, filed a joint written statement. They have traversed the averments of the plaintiffs and denied that the plaintiffs acquired any right of pasturage over the suit land by custom. The defendant No. 3 has also filed a separate written statement denying the averments of the plaintiffs.

4. Both the Courts below have concurrently held that the plaintiffs failed to establish acquisition of any right by custom to the land in question.

5. The plaintiffs in the instant suit examined six witnesses and proved the documents, Exts. A/1 to A/9. The learned lower appellate Court disbelieved the evidence of P. Ws. 1, 5 and 6 on the ground that they were themselves plaintiffs and highly interested in the suit land. He has also rejected their evidence on the ground that their evidence was of the nature of hearsay, inasmuch as, they did not disclose the sources of their knowledge that the land in question was being used as grazing land from time immemorial.

6. Shri A. Nilamani Singh, Counsel for the appellants first submits that the right of pasturage to Government land can be acquired by custom and in support of his submission, has cited AIR 1950 56 (Privy Council) Their Lordships of the Privy Council in AIR 1950 56 (Privy Council) observed:

A claim by the inhabitants of a village to the use of certain area as a cremation ground of the village can only be supported on ground of custom and not on the basis of dedication or lost grant.

Their Lordships further observed:

What the Courts have required of a custom, if the law is to uphold it as a right, is that it should be immemorial in origin, certain and reasonable in nature and continuous in use.

In AIR 1918 PC 81 (supra) their Lordships observed:

When a custom or usage, whether in regard to a tenure or a contract or a family right, is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom or usage to be introduced into the law without the necessity of proof in each individual case.

The Learned Counsel for the respondents have not challenged the proposition of law that right of pasturage can be acquired to a plot of land belonging to the Government by custom. The question is whether such right has been acquired by the plaintiffs.

7. Learned Counsel for the appellants submits that the lower appellate Court has rejected their evidence on invalid ground. In support of his submission he cited AIR 1925 213 (Privy Council) in which their Lordships held:

After the existence of a custom for some years has been proved by direct evidence, it can only, as a rule, be shown to be immemorial by hearsay evidence, and it is for this reason that such evidence is allowable as an exception to the general rule.

In the instant case, by the evidence of P. Ws. 1, 5 and 6, the plaintiffs sought to establish, for the first time, that they have acquired the right of pasturage to the suit

land by custom. Before such right is established, no hearsay evidence would be admissible in the light of the decision cited above. It cannot therefore be said that the learned lower appellate Court Committed any error of law in refusing to rely on the evidence of P. Ws. 1, 5 and 6.

8. The learned courts below has also considered the evidence of the other witnesses and has characterised them as stereotyped inspiring no confidence and in that view he has refused to place any reliance on their evidence. The appellate Court below has observed.-

The oral testimony of these witnesses does not carry conviction to my mind as to the existence of the alleged custom.

This is a clear finding of fact, and even if it a erroneous, it cannot be upset in a second appeal.

9. The next submission of the appellants is that the appellate Court below has omitted to consider some documentary evidence, and misconstrued others. It is not correct to say that the learned lower appellate Court has not considered any of the above-mentioned documents. He has considered them and has held that these documents do not establish the right claimed by the plaintiffs. Mr. Nilamani Singh, submitted that the learned lower appellate Court had committed an error in not taking Ext. A/9 into consideration. The learned lower appellate Court observed that Ext. A/9 had no important bearing upon the determination of this case. The Learned Counsel placed the document before us. We have perused Ext. A/9. Ext. A/9 is a map of the village No. 95, which includes the land in question. In that document the suit land has been recorded as "grazing ground". We have perused the document itself and we find in Ext. A/9 that the disputed Dags 1141 and 1144 have been recorded as "grazing ground". The point is not whether the land in question has been recorded as grazing ground, but whether the plaintiffs acquired any right of pasturage by custom on that "grazing ground". We therefore, have to see whether the plaintiffs have been able to establish their custom as alleged. In support of this contention the Learned Counsel for the appellants has cited ILR (1903) Cal 291 (PC) and AIR 1935 125 (Privy Council) Their Lordships, in the case of Jagadindra Nath Roy v. Secy. of State for India, reported in (1903) ILR 30 Cal 291 (PC) (supra) have held:

Maps and surveys made in India for revenue purposes are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they are made.

They are not conclusive, and may be shown to be wrong; but in the absence of evidence to the contrary they may be judicially received in evidence as correct when made.

In AIR 1935 125 (Privy Council) (supra) their Lordships have held:

The revenue survey is conducted by a public officer in the exercise of his statutory authority and he must have given an opportunity to all the persons interested in the proceedings to make their claims and to produce their evidence in support thereof. The maps thus prepared after due inquiry are presumed to be correct, unless they are shown to be wrong.

The ratio of the two above decisions is that the revenue records including maps proved in a case are prepared after following certain prescribed procedure. They are presumed to be correct. The presumption, however, is rebuttable. In the instant case Ext. A/9 shows that the suit land was recorded in the Government Record as "grazing ground"; but, as observed earlier, it does not prove that the plaintiffs have acquired right of pasturage by custom. Nor does it show that the Government has lost its right to the land in question. The Government could very well put the land to any other use and not for the purpose of grazing.

10. The learned lower appellate Court has considered Exts. A/1 to A/8 and on consideration has found that they do not establish the right claimed by the plaintiffs. The law is well settled that a finding of fact arrived at on a consideration and appreciation of documentary evidence does not cease to be a finding of fact; and such a finding, even if erroneous, cannot be upset in a second appeal.

11. Both the Courts below have considered the evidence before them -- both oral and documentary, and come to the concurrent finding that the plaintiffs have failed to prove their right. This is a finding of fact and even if it is erroneous it cannot be upset in second appeal.

12. In the result, the appeal fails and is dismissed. We, however, make no order as to costs.

D. Pathak, J.

13. I agree.