
(2005) 3 GLR 189 : (2005) GLT 713 Supp

Gauhati High Court

Case No: Second Appeal No. 176 of 1997

Mohammed Ali Sk and
Others

APPELLANT

Vs

Kalima Bewa and
Others

RESPONDENT

Date of Decision: Aug. 9, 2004

Acts Referred:

- Assam (Temporarily Settled Areas) Tenancy Act, 1971 - Section 66
- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 31, 11

Citation: (2005) 3 GLR 189 : (2005) GLT 713 Supp

Hon'ble Judges: B. Biswas, J

Bench: Single Bench

Advocate: K.A. Mazumdar, for the Appellant; B. Devi and M.H. Rajbabhuiyan, for the Respondent

Final Decision: Dismissed

Judgement

D. Biswas, J.

Heard Mr. K.A. Mazumdar, learned counsel for the appellants and also Ms. B. Devi, learned counsel for the respondents.

The respondents herein as plaintiffs instituted Title Suit No. 34 of 1982 in the Court of Munsiff No. 1, Dhubri for declaration of title, confirmation of possession, permanent injunction and for direction for correction of revenue records to delete the names of the defendant-appellants from the Khatians issued in their favour in respect of the disputed land. The plaintiff-respondents' case is that their father Kitab Sarkar and one Amiruddin Sk, were tenants under the Jamindar, namely, Nripendra Narayan Choudhury. Their names were recorded in respect of 107 Bighas, 2 Kathas and 15 Dhurs. The plaintiffs inherited the lands from their father Kitab Sarkar @ Kitab Sk. The co-sharer Amiruddin was not interested in the land and, as such, the entire land in question was under

occupation of the plaintiffs. During survey operation, the land was under water and the plaintiffs possessed the same after its re-appearance. The plaintiff-respondents also inducted some persons as tenants into the said land. The defendants who were never in possession of the land surreptitiously got their names recorded in collusion with the revenue staffs. An area of 33 Bighas and odd land in Khatian No. 77 (Dag No. 169) was wrongly recorded in the name of defendant No. 2. Another plot of land measuring 38 Bighas and odd appertaining to Khatian No. 154 was recorded in the name of defendant Nos. 7(a), 7(b) and 8. Similarly, name of defendant No. 9 was recorded in respect of 20 Bighas of Khatian No. 117 and in the like manner the names of defendant Nos. 10(a) to 10(i) were recorded in respect of 15 Bighas and odd land of Khatian No. 72. the plaintiff-respondents case is that the aforesaid defendants have no right, title and interest over the suit land and they never occupied the same.

3. The appellant-defendant Nos. 2 to 10 contested the suit. They denied the claim of the plaintiff-respondents and asserted that they got settlement of the land from Gauripur Raj Estate. They also claimed that they were in possession of the said lands by virtue of settlement order issued in their names.

4. The learned Trial Judge by the judgment dated 22.5.1987 decreed the suit declaring right, title and interest of the plaintiff-respondents. Their possession over the suit land has also been confirmed with direction that the Khatian should be corrected and the names of the defendant-appellants shall be deleted therefrom.

5. The learned First Appellate Court by the judgment dated 10.9.1997 passed in Title Appeal No. 40 of 1987 dismissed the suit confirming the judgment and decree passed by the learned Munsiff.

6. No substantial question of law was specifically framed at the time of admission of the appeal. However, Mr. Mazumdar, learned counsel for the appellants, during the course of argument, submitted that the grounds mentioned in the Memo of Appeal are the substantial question of law. It is, therefore, considered imperative to quote hereinbelow the five grounds incorporated in the memo of appeal :-

"(A) That the substantial question of law arises as to whether the suit filed by the plaintiffs is barred by res judicata in view disposal of 2(two) other title suit earlier regarding the same land vide T.S. No. 16/80 and R.S. No. 171/81.

(B) For that the substantial question of law arises as to whether the impugned judgment and decree passed by the learned Civil Judge State respondents. Division, Dhubri is as per Order 41, Rule 31 of Civil Procedure Code.

(C) The substantial question of law arises as to whether the suit filed by the plaintiff is maintainable as the relevant provision of tenancy laws in Assam.

(D) For that the substantial question of law arises as to whether the impugned judgment is lawful in absence of any specific finding regarding the defence case as evident from paragraph 11(Eleven) of the impugned judgment.

(E) For that in any view of the matter the impugned judgments and decree are bad in law and as such the same is liable to be set aside and quashed."

7. Before the above questions are taken up for consideration, it would be apposite to refer to para-9 of the judgment of the learned First Appellate Court. The observation made therein based on oral as well as documentary evidence clearly indicate that the defendant-appellants have no possession over the suit land, but their names were recorded in the Khatian at a later course of time without any order from higher authority. The observation made therein further shows that the plaintiff-respondents exhibited as many as six revenue receipts which indicate that they have been paying revenue for the lands in question since 1935 BS. Exts. 7 and 8 are receipts of payment of Salami to the erstwhile Jamindar. Ext. 9 is the order of settlement in respect of Kitab Sarkar and Amiruddin Sk., Ext. 10 is the application for settlement dated 11.5.1933 submitted by Kitab Sarkar, the predecessor-in-interest of the respondent-plaintiffs. As against this, the defendant-appellants produced Exts. GA(1) to GA(9), revenue receipts. The document of title exhibited by them is Ext. GA which is a Khatian where the names of the defendant-appellants appear to have been written. According to the learned counsel for the respondents, this correction in the Khatian was made by the Lat Mandal without any order from the Assistant Settlement Officer or any other higher authority. The learned counsel further submitted that the defendant-appellants were never in possession of the land but they got their names mutated in collusion with the Lat Mandal. Preponderance of the evidence, both oral and documentary, supports the case of the plaintiff-respondents that they have been in possession of the land since the time of their predecessor late Kitab Sarkar after settlement of the same from the erstwhile Jamindar Nripendra Narayan Choudhury.

8. On the above factual background, which has been accepted by the Courts below in their concurrent findings, I am now referring to the grounds taken in the Memo of Appeal. As submitted by Mr. K.A. Mazumdar, learned counsel for the appellants, these grounds are treated as the substantial questions of law in the second appeal.

9. The first ground is in relation to objection raised about the maintainability of the suit. It is submitted that the suit is barred by the principle of res judicata as per provisions of Section 11 of the CPC in view Of dismissal of Title Suit Nos. 16 of 1980 and Tile Suit No. 117 of 1981 filed earlier.

10. It appears that the plea of res judicata was not specifically pleaded in the written statement and no issue was also framed in that direction. However, while disposing of the Issue No. 2 on the maintainability of the suit, the learned Trial Judge held that it was the duty of the defendant to call for the records in order to show that the present suit cannot

be entertained being barred under the provision of Section 11 of the Code of Civil Procedure. If the defendants were firm in their objection about the maintainability of the suit being barred by the principles of res judicata, they ought to have called for the records of those two title suits and at least ought to have produced the certified copy of the judgments passed therein in order to show that the disputes raised in the instant suit were the same and there was a final verdict, I do not find any error in the decision of the learned Courts below so far as objection on this ground is concerned. That apart, the question whether a suit is barred by the principles of res judicata is a question of fact and not a question of law and, under no circumstances, it can be treated as substantial question of law.

11. The second question relates to failure/omission on the part of the First Appellate Court in complying with the provisions of Order 41, Rule 31 of the Code of Civil Procedure. The provisions contained therein prescribe the mode in which the judgment has to be delivered by the First Appellate Court. Deviation therefrom will not be a ground for reversal of a judgment unless on record it is shown beyond doubt that the judgment in question suffers from perversity.

12. The third ground relates to maintainability of the suit under provisions of Assam (Temporarily Settled Areas) Tenancy Act, 1971. Mr. Mazumdar, learned counsel for the appellant submitted that Section 66 of the aforesaid Act operates as a bar in entertaining disputes relating to correction of revenue records by a Civil Court. It may be mentioned here that the correction of the revenue records, prayed for in the instant suit, was consequential in nature. The prime disputes relates to title which the Civil Court is competent to decide. The suit was filed for declaration of title, confirmation of possession and injunction and not for correction of the Khatian alone. Therefore, in my opinion, jurisdiction of the Civil Court cannot be ousted in entertaining a suit of this nature. Section 66 does not bar a suit filed for declaration of title with consequential reliefs. Therefore, the plea that the suit is barred under the aforesaid provisions of the Act of 1971 is not tenable in law.

13. The fourth ground is founded on the alleged omission on the part of the Courts below in dealing with the defence case. The learned Munsiff while dealing with the Issue No. 6 dealt with the defence case and come to the conclusion that the defendants (appellants) have totally failed to prove that the lands for which they got Khatian was settled with them. Though there is no specific discussion on this point in the judgment of the learned First Appellate Court, yet for reasons recorded hereinbefore, this omission will not render the judgments as bad in law.

14. The ground No. 5 is vague and it does not pose any specific question of law, not to speak of any substantial question of law and hence, it requires no discussion.

15. The discussion above clearly shows that this appeal is devoid of merit. No substantial question of law is also involved in this appeal. 16. In the result, the appeal is dismissed.

No costs.