

(1978) 03 GAU CK 0004

Gauhati High Court

Case No: None

Haladhar Sarma

APPELLANT

Vs

Assam Go-Seva Samity

RESPONDENT

Date of Decision: March 22, 1978

Acts Referred:

- Societies Registration Act, 1860 - Section 6

Citation: AIR 1979 Guw 23

Hon'ble Judges: Baharul Islam, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Baharul Islam, J.

This appeal is by the defendant. The brief facts of the case are:

The plaintiff, namely, Assam Go-Seva Samiti, is an institution registered under the Societies Registration Act and established for doing constructive works in the line of the ideals of Mahatma Gandhi. Its case was that it got settlement of 99 and odd Bighas of land at village Basistha under Beltola mouza. The land originally was Fee-Simple Grant belonging to late M.M. Lahiri, who donated the land to the Bhudan Movement. Smt. Amal Prova Das, according to the plaintiff, was, and still is, the President of the said Samiti. The land was mutated in her name as the President of the Samiti. The plaintiffs further case is that 6 Bighas out of the said land had been acquired for Government purposes and the rest remained in possession of the plaintiff Samiti. The Samiti constructed house for accommodation of its office on an area of land measuring 1 1/2 kathas of Dag No. 62 with C.I. Sheet roofing. There was also a thatched house attached to the above-mentioned C.I. Sheeted house. A temporary latrine was also constructed for use by the occupants of the aforesaid premises. The defendant Shri Haladhar Sarma was a member of the said Samiti, who later on was appointed Secretary of the Samiti in 1966 at a salary of Rs, 100/-

per month, subsequently raised to Rs. 150/-per month. He was allowed to stay in one of the rooms for the convenience of doing the official work of the institution. But later on as he failed to discharge his duties honestly and with integrity, he was removed from the Secretaryship by a resolution in meeting of the society held on 29-11-1968 and Shri Ramcharan Das and Shri Khargeswar Bhuyan were appointed Joint Secretaries in his place. The defendant was then directed by the Samiti to hand over charge to the Joint Secretaries within 31-12-1968 and the defendant handed over charge as directed. The defendant was also directed to vacate the room occupied by him and he complied with the directions. But sometime later he with two or three other persons forcibly entered into the room after breaking open the lock put to it by the plaintiff. So the plaintiff was compelled to bring this suit for ejectment of the defendant from the suit premises.

2. The defendant has filed a written statement and contested the suit. He has admitted that the plaintiff is a registered society. He took several pleas in the written statement, such as that the suit was not maintainable, that it was barred by limitation, that the plaintiff had no locus standi to bring the suit and that there was no cause of action for the suit. He admitted that 99 and odd Bighas of land had been donated by the original owner to the Assam Bhudan Samiti. But his case was that the Bhudan Samiti made allotments of that land to different persons including himself and that 30 Bighas of the land was allotted to him and he constructed a dwelling house on that land and he was occupying the same. He says that the suit premises belonged to him and not to the plaintiff-society.

3. On the basis of the pleadings a number of issues were framed by the trial court and after trial it dismissed the plaintiffs suit. On appeal the learned Assistant District Judge No. 2, Gauhati reversed the judgment and decree of the trial court and decreed the plaintiff's suit.

4. The first submission made by Shri B. Sarma, learned Counsel appearing for the appellant, is that the suit has not been properly framed and valued. The material prayer of the plaintiff is "that the Samiti be awarded possession of the house described in the schedule to the plaint on eviction of the defendant and his persons therefrom." In para 9 of the plaint the plaintiff valued the suit for the purpose of court's jurisdiction at Rs. 5000/-. Shri Sarma submits that as declaration of title to the house is not possible without a declaration of plaintiff's title to the land on which the house has been built, the frame of the suit and its valuation have been improper as the suit, counsel submits, ought to have been for a declaration of title to the land on which the house is situated as well as to the house. I am unable to accept the submission of the learned Counsel, for, it is conceivable that declaration of title to a house is possible without declaration of his title to the land on which the house is situated. In the instant case if the plaintiff is otherwise able to establish his title to the house in question, he will get a decree, else his suit will fail. In my opinion the frame of the suit is not bad for want of declaration of plaintiff's title to the land

in question. The submission of the appellant has no substance.

5. The next submission of the learned Counsel for the appellant is that the plaintiff had no locus standi to file this suit. His submission is that Smt. Amal Prova Das was not the President of the plaintiff-Samiti and as such she had no locus standi to file the suit. The admitted position is that the plaintiff-society has been registered under the Societies Registration Act, 1860. Section 6 of the said Act provides-

6. Suits by and against societies.- Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

The plaintiff in the cause title of the suit described itself as "Assam Go-Seva Samiti (represented by its President Smt. Amal Prova Das)..."

In para 6 of the written statement the defendant has stated:

He does not admit that Smt. Amal Prova Das is the President of the Go-Seva Samiti.... She has no locus standi to bring this suit.

The defendant, says that he himself is a member of the Samiti. He is therefore expected to know who the President of the Samiti is. On a question put to him, learned Counsel for the appellant submits that Shri M.M. Choudhury, was the President but he resigned. The defendant is unable to say as to who became the President in place of Shri Choudhury, Relevant passages from the evidence of Shri Prabir Ram Barua, one of the P. W's were read out to me by learned Counsel of the parties. Shri Barua has deposed that initially his father late Kamakhya Ram Barua was the President of the Samiti, after him Shri M.M. Choudhury became the President, and on Shri M.M. Choudhury's resignation Smt. Amal Prova Das became the President of the society and he himself was appointed the Working President. There is no evidence from the side of the defendant to the contrary. On the other hand, in the memorandum of appeal the defendant has described the plaintiff-respondent as "Assam Go-Seva Samiti through its President Smt. Amal Prova Das. This in my opinion, is an admission by the defendant-appellant that Smt. Amal Prova Das was the President of the Samiti at the relevant time. Mr. Sarma submits that it does not amount to an admission. Smt. Das was described as the President of the Samiti as she was so described in the plaint I am unable to accept the contention as there is no allegation to that effect by the appellant in the memo of appeal or anywhere. Smt. Amal Prova being the President of the society,

therefore, had the power u/s 6 of the Societies Registration Act to bring the suit. This submission of the learned Counsel also has no substance.

6. The next submission of Shri Sarma is that the plaintiff sought to raise certain points to wit, (i) about the locus standi of the plaintiff to bring the suit, (ii) that the plaint disclosed no cause of action and (iii) that the suit was barred by limitation. The learned lower appellate court held that the appellant who was respondent before him sought to raise these points but he did not allow him to do so as there was no cross objection. The learned lower appellate court committed an error in this regard. A cross objection could be filed by a party against a part of the decree but not against a finding. I therefore allowed Shri Sarma to argue those points and make his submissions before me.

7. With regard to the locus standi I have already given my finding above. But Shri Sarma also could not seriously contend that the plaint disclosed no cause of action. He also did not seriously submit either that the suit was barred by limitation. In the circumstances therefore it cannot be said that the plaintiff had no cause of action or that the suit was barred by limitation.

8. The next submission of the learned Counsel for the appellant was that the judgment of the learned lower court was not in accordance with Order 41, Rule 31 of the Civil P.C. Rule 31 of Order 41 provides:

The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time....

It is true that the learned lower appellate court has not mentioned the above points in a tabular form but on a perusal of its judgment it appears that the points for determination were before it and that the reasons for its findings were given. This submission of the learned Counsel also has no substance.

9. The last point which is of substance is as to who was the owner of the house in question, As stated above, the plaintiffs case was that it was the owner of the entire land covered by the Patta No. 2 (vide Ext. 2) and that the premises in question were constructed by it and that one of the rooms was allowed to be occupied by the defendant as its Secretary. In a nutshell the claim of the plaintiff was that it was the owner of the house. On the other hand, the defendant claimed that the houses were constructed not on the land belonging to the plaintiff but on a separate plot of land measuring 30 Bighas which was allotted to him by the Bhudan Samiti. As already stated, this suit was not for declaration of plaintiff's title in respect of the land. In

this suit no decree for the title to the land can be granted. But in order to find as to who constructed the house and how he did it, the Court can examine the prima facie title of the party to the land in question. From that point of view the learned lower appellate court examined and found, prima facie, and in my opinion correctly, that the land in question belonged to the plaintiff. He based his finding on this point on oral evidence as well as a number of documents particularly Ext. 2 and Ext. 6. Ext. 2 is the patta No. 2 of village Basistha in Mouza Beltola. It contains the suit dag No. 68. It stands in the name of "Smt. Amal Prova Das, President, Assam Seva Sangha". Ext. 6 is a report submitted by the defendant as the Secretary of the Assam Go-Seva Samiti on 8-4-1959 to the society. In this document he admitted that an area of land measuring nearly 100 Bighas had been donated to the Bhudan Samiti by the original owners of the land which was Fee Simple. The learned lower appellate court, therefore, was justified in his observation that after Ext. 6 it did not lie to the mouth of defendant to say that the entire land of nearly 100 Bighas (of which 6 Bighas had been acquired by the Government) did not belong to the plaintiff. Therefore, the learned lower appellate court committed no error in coming to a finding that prima facie the plaintiff had title to the land covered by Patta No. 2. With regard to the houses in question, the learned lower appellate court also came to the finding on a consideration of the oral evidence of the witnesses examined by the parties, that the houses were constructed by the plaintiff and it belonged to it, Ext. 5 is a list of articles which was exhibited by the defendant showing the articles handed over by him to the plaintiff. The articles described at serial Nos. 1, 2 and 3 at page 2 of Ext. 5 were respectively" (1) A three-roomed house with a verandah on the front, C.I. sheet roofed, Assam type; (2) A cow-shed with C.I. Sheet roofed; (3) A cow-shed-one room of C.I. Sheet, the other roof was of asbestos.

The learned Counsel for the appellant submits that the house described in the Schedule to the plaint does not tally with the house described at serial No. 1 at page 2 of Ext. 5. It is true that in the plaint the verandah¹ of the house was not mentioned but all the same the learned lower appellate court came to the finding that the house described in Ext. 5 and that described in the schedule was one and the same. The finding of the learned lower appellate court with regard to the ownership of the house is a finding of fact, and even if erroneous, the law is well settled, it cannot be upset in a second appeal.

10. In the result this appeal fails and is dismissed. The parties will bear their own costs of this appeal.