

Tulan Chandra Kakoty Vs Laburam Laskar & Ors.

Court: Gauhati High Court

Date of Decision: June 11, 2012

Acts Referred: Civil Procedure Code, 1908 " Order 5 Rule 1
Civil Procedure Code, 1908 (CPC) " Order 5 Rule 1

Citation: (2012) 5 GLR 71 : (2012) 4 GLT 817

Hon'ble Judges: A.K.Goswami, J

Bench: Single Bench

Advocate: Mr. D. P. Chaliha, Sr. Advocate Advocate appeared for the Respondents: Mr. D. C. Borah, Advocates appearing for Parties

Judgement

A.K. Goswami, J.

Heard Mr. D. P. Chaliha, learned senior counsel for the appellant as well as Mr. D.C. Borah, learned counsel appearing for the respondent.

2. This second appeal is preferred by the plaintiff against the judgment and decree dated 6.2.2002 passed in Title Appeal No. 12/01 by the

learned Civil Judge (Sr. Division) Nagaon, by which the appeal preferred by the defendants was partly allowed holding that while the plaintiff will

have the title and interest over the suit land, he would not be entitled to get khas possession over the suit land.

3. By the said judgment, the learned lower appellate Court also declared joint possession of the plaintiff and the defendant No. 1 over the suit land.

The learned trial Court had decreed the suit of the plaintiff.

4. The case of the plaintiff, as set out in the plaint is that the land measuring 11 bighas and 8 lechas of land covered by dag no .238, 279,290,309

and 358 patta No.26 of Medhi Bhakatgaon kissam under Gorubat mouza comprises the suit land. The plaintiff was the owner and possessor of

the entire suit patta which contained 13BDC6Ls of the land The plaintiff had gifted and had also sold part of the land from the land measuring

13B1K6Ls. It is pleaded that the defendants had tried to dispossess the plaintiff in 1991 and though the plaintiff had filed a criminal proceeding

under Section 145 Cr.P.C, the same was decided against the plaintiff and the revision preferred was also decided against the plaintiff. Prayer for

mutation made by defendant No. 1 was rejected by the Circle Officer, Kampur by orders dated 2.4.1991 and the defendant No. 1 did not also

succeed in the appeals preferred against the said orders passed in Case Nos. MA 13/9192 and MA 14/9192. The defendants tried to forcibly

dispossess the plaintiff on 11.6.92 and therefore, the plaintiff filed the suit for right, title and interest over the land. During the pendency of the suit,

on 21.1.96, the plaintiff was forcefully dispossessed and accordingly, the plaint was amended whereby, a decree for khas possession also came to

be prayed.

5. In the written statement filed by defendants 1, 2, 3 and 4, apart from other pleas, a plea was also set up that the suit was barred under the law

of limitation as well as adverse possession. The possession of the plaintiff was also denied and it was asserted that the defendants had been

possessing their portion of the suit land under their own right and title and there was no occasion to dispossess the plaintiff from his portion of the

land. It is stated in the written statement that the suit land originally belonged to one Bora Barman alias Bhugram, who was the owner of about one

hundred bighas of land including the suit land and he had married twice. From the first wife, he had six daughters and from the second wife, he had

two sons. The defendant No. 1, Laburam Laskar, who was the son of of the eldest daughter of Bora Barman, namely, Smti Dhan, was taken in

adoption by Bora Barman, as there was no male issue from his first wife and Laburam Laskar started living in the house of Bora Barman as his

adopted son. It is also pleaded that during 1960, Bora Barman divided the landed property measuring about 100 bighas equally amongst his 3

sons, namely, the defendant No. 1, Padma Kakoti and Biswa Kakoti. Biswa Kakoti sold his share to his brother Padma Kakoti as also to the

defendant No. 1 and left the place for good. The plaintiff is the son of Padma kakoti. It is also pleaded that though the property was divided by

Bora Barman, family of Bora Barman continued to live asjoint Hindu family.

6. On the basis of the pleadings, learned trial Court had framed 9 issues and two additional issues which are as under:

(1) Whether the suit is maintainable in the present form and whether the plaintiff has any legal locus standi to file the suit?

(2) Whether the suit is bad for nonjoinder of necessary parties?

(3) Whether the suit is barred by limitation and adverse possession?

(4) Whether the suit is bad under Suit Valuation Act and Court Fee Act?

(5) Whether the suit land originally belonged to late Bora Barman (Koch) and the defendant No. 1 was the adopted son of Bora Barman?

(6) Whether the suit land exclusively belonged and is under possession of the plaintiff and whether the defendant's share also forms a part of the

suit land?

(7) Whether the plaintiffs entitled to any relief?

Additional issue.

(8) Whether the plaintiff has any right, title and interest over the suit land?

(9) Whether there is any cause of action for the suit?

7. During trial, plaintiff had examined 3 witnesses and defendants had examined 5 witnesses. Both the parties had also exhibited certain documents.

8. The learned trial Court disbelieved the version of adoption of defendant No. 1 as the adopted son of Bora Barman. The learned trial Court also

recorded a finding that the plaintiff could prove right, title and interest over the suit land. Plea of adverse possession was decided against the

defendants and, accordingly, the suit was decreed by declaring plaintiffs right, title and interest over the suit land and also for khas possession of

the suit land by evicting the defendants.

9. The learned lower appellate Court also affirmed the finding that defendant No. 1 was not the adopted son of Bora Barman. Thus, both the

Courts below concurrently held that the defendant No. 1 is not the adopted son of Bora Barman. The learned lower appellate Court also noticed

that defendant No. 1 had not examined himself in the suit. The learned lower appellate Court, as has been noticed earlier, declared that plaintiff will

have title and interest over the suit land but he will not get khas possession over the suit land. The appellate Court concluded that defendant No. 1

will have some share over the land of his grandfather, being a grandson, and therefore, he has a share in respect of the suit land, which originally

belonged to Bora Barman. The learned lower appellate Court recorded the finding that the plaintiff has the title and interest over the suit land and

defendant No. 1 has right to some extent over the suit land.

10. The second appeal was admitted on 18.6.2002 on the following substantial questions of law:

1. Whether the learned Court below erred in holding that the defendant had a share in the suit property through his mother, who is the daughter of

the original owner thereof, in absence of any pleading In the written statement or issue in that regard?

2. Whether the learned Court below erred in denying the decree for possession in favour of the appellant/plaintiff though declaring his right title

therein, on the ground that the defendant had a share in the suit property through his mother as above?

11. Mr. D.P. Chaliha, learned senior counsel for the appellant submits that the learned lower appellate Court was totally wrong in making out a

new case in partly allowing the appeal. The learned senior counsel submits that no appeal was preferred by defendants against the judgment of the

lower appellate Court. There was no pleading whatsoever regarding inheritance through Smt. Dhan and the case of the defendant was based on

adoption and that Bora Barman had divided about 100 bighas of land to his 3 sons including the defendant No. 1. In view of the concurrent finding

of fact that defendant No. 1 was not the adopted son of Bora Barman, the entire case of the defendants falls through, he submits. It is also

submitted by him that there is no material to show that Biswa Kakoti, one son of Bora Barman had sold any land to defendant No. 1.

12. In view of the aforesaid position, the learned senior counsel submits that finding of the lower appellate Court that defendant No. 1 had a share

in the suit property is totally uncalled for and the same deserves to be set aside. The learned senior counsel submits that the learned lower appellate

Court was wrong in not granting decree of khas possession to the plaintiff.

13. Mr. D.C. Borah, learned counsel for the respondents submits that the fact remains that the defendant No. 1 was also a grandson of Bora

Barman, he being son of Smt. Dhan and, therefore, even though both the Courts below had held that the defendant No. 1 was not the adopted son

of Bora Barman, he being the grandson of Bora Barman, is entitled to a share in the property and therefore, the learned appellate Court did not

commit any irregularity, which justifies interference in the second appeal.

14. Pleadings of the parties form the foundation of their case and it is not open to them to give up the case set out in the pleadings and propound a

new and different case. No party is permitted to travel beyond the pleadings. The object and purpose of pleading is to enable the adversary party

to know the case it has to meet. In order to have a fair trial, it is imperative that the parties should state the essential material facts so that the other

party may not be taken by surprise. No doubt, pleadings should receive a liberal construction and it is also a duty of the Court to ascertain the

substance of the pleadings and not the form to determine the case and the issues upon which they went to trial.

15. The pleadings as set out in the plaint and the defence put up by the defendants had not even remotely raised the question of defendant No. 1

having a share in the suit land through Smti. Dhan, eldest daughter of Bora Barman. Materials on record disclose that there was no pleading with

regard to share of property being inherited by defendant No. 1 as a son of Smt. Dhan. The entire case of the defendants rested on defendant No.

1 being the adopted son of the original owner of the land, namely, Bora Barman. In absence of any pleadings and naturally any evidence, the lower

Court was not justified in surmising that the defendants should be entitled to some share in the suit land. "Some share" is as vague as anything.

16. In the adversarial context of litigation, pleadings of the parties play a pivotal role and the adjudication of the dispute has to be on the basis such

pleadings. A question, which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the

subject matter of any issue, could not have been decided by the Court. In the instant case, the learned lower appellate Court has traveled beyond

the pleadings and as such, the substantial questions of law have to be answered in favour of the appellant. It is seen that in the original appellate

judgment dated 6.2.2002, the word "right" in paragraph 27 was struck off without any initials. Be that as it may, in absence of a specific case that

the defendants are entitled to a share through Smti. Dhan, the lower appellate Court was not justified in declaring joint possession of defendant No.

1 with the plaintiff and in not granting khas possession over the suit land.

17. In view of the above, the judgment and decree of the learned lower appellate Court is set aside and the judgment and decree of the learned

trial Court is restored.

18. Appeal is allowed.

19. No costs.

20. Send back the LCRs.