
(2015) 04 GAU CK 0053

Gauhati High Court

Case No: Regular Second Appeal 170 of 2008

Rabi Biswas

APPELLANT

Vs

Pramila Das and
Others

RESPONDENT

Date of Decision: April 8, 2015

Acts Referred:

- Penal Code, 1860 (IPC) - Section 326, 34, 447
- Transfer of Property Act, 1882 - Section 54

Citation: (2015) 04 GAU CK 0053

Hon'ble Judges: Arup Kumar Goswami, J

Bench: Single Bench

Advocate: M.H. Choudhury, for the Appellant; J. Singh, Senior Advocate and B.J. Mukherjee, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Arup Kumar Goswami, J

This Second Appeal is directed against the judgment and decree dated 04.09.2008 passed by the learned Civil Judge, Morigaon, in Title Appeal No. 3 of 2008 dismissing the appeal of the defendant and upholding the judgment and decree dated 28.05.2008 passed by the learned Munsiff No. 1, Morigaon, Assam, in Title Suit No. 21 of 2005.

2. The case set out in the plaint, in short, is that Annual Patta was issued in Dag No. 11, being Annual Patta No. 89 in favour of predecessor-in-interest of the plaintiffs, namely, Lalit Chandra Das, in respect of 4 Kathas of land. Lalit Chandra Das died in the year 1998 in an accident leaving behind the plaintiff No. 1 and his son, Brajen Das. Brajen Das also died in the year 2002 leaving behind his wife, Smt. Anjana Das, and three minor children. Anjana Das is plaintiff No. 2 and the minor children are the plaintiff Nos. 3 to 5, represented by their mother. The 4 Kathas of land referred to in Schedule-A was bounded by walls on all sides by Lalit Chandra Das during his lifetime. The Annual Patta was

converted to Periodic Patta in the year 2004. The plaintiffs had constructed 7 Nos. of rental houses in the said 4 Kathas of land and, in the month of January, 2005, each rental house was let out to the principal defendant and 6 proforma defendants at the rent of Rs. 200/- each per month. While all the proforma defendants were paying rent regularly, the principal defendant did not pay the monthly rent despite repeated verbal demands. On 06.08.2005, the plaintiffs sent one of their tenants, namely, Indrajit Biswas, to ask the principal defendant to pay the monthly rent to the plaintiffs. At this, he was assaulted with sharp weapon resulting in a police case under Section 447/326/34 IPC. The principal defendant, besides denying right, title and interest of the plaintiffs, also threatened the plaintiffs. In such circumstances, the plaintiffs filed a suit for declaration of right, title and interest in respect of 10 Lechas of land out of 4 Kathas in Dag No. 11 of Periodic Patta No. 15 of Raina Pathar Kisham of Mouza- Niz Tetelia, and for recovery of khas possession of the A-Schedule land and for ejectment of the defendant from the rented house, etc.

3. The principal defendant had filed written statement as well as counter-claim. In the written statement, he had admitted that the plaintiffs constructed 7 Nos. of rental houses and let them out to the proforma defendants. However, he denied that he was a tenant. He has admitted that originally one Moneswar Das was the Pattadar of Dag No. 11 of the Annual Patta No. 95 (new), which was later on again changed as Annual Patta No. 89. It is, however, stated that the land had measured 1 Bigha. He pleaded that Lalit Chandra Das, upon whom the land of Dag No. 11 devolved on the death of his father, sold out to him 2 Kathas of land from 1 Bigha on 15.03.1994 by executing one Hand-note (revenue stamped) and one affidavit sworn and executed before Executive Magistrate, Morigaon, for consideration of Rs. 20,000/-. Because of ban imposed by the State Government regarding transfer of Annual Patta land, registered sale deed could not be executed. From the time of his purchase, he had been in possession of the purchased land by constructing dwelling house, which is numbered as Holding No. 989 by Morigaon Town Committee. He has also stated that boundary wall was constructed around 1 Bigha of land. 4 Kathas, out of 5 Bigha land was converted to Periodic Patta No. 15 and 1 Katha was still kept under Annual Patta. The 4 Kathas of land covered by the Periodic Patta contained 1 Katha of land, out of 2 Kathas purchased by the defendant. In the counter-claim also similar stand, as in the written statement, was taken and prayer was made for declaring his possessory right over 2 Kathas of land by virtue of his purchase.

4. Seven issues came to be framed by the learned trial Court on the basis of pleadings of the parties. Out of the said issues, Issue Nos. 3, 4, 5, 6 and 7 are relevant for the purpose of this appeal. They are as follows: (3) Whether the defendant is a tenant of the plaintiff under the Assam Urban Areas Rent Control Act, 1971? (4) Whether the defendant has defaulted in payment of monthly rent since January and, therefore, liable to be ejected from suit premises? (5) Whether on 14.03.1994, the principal defendant purchased the suit land from Lalit Chandra Das by executing a Hand-note for consideration of Rs. 20,000/-? (6) Whether the plaintiff has right, title and interest over the (A) Schedule land?

(7) Whether the defendant has possessory right over the land mentioned in Schedule-1 of the counter-claim petition?

5. During trial, the plaintiffs examined four witnesses, including the plaintiff No. 1 as PW1, and Indrajit Biswas as PW3. The defendant examined himself and two other witnesses including the scribe, Dilip Sarma. Considering the materials on record, the learned trial Court decreed the suit. Relying on Section 54 of the Transfer of Property Act, the learned trial Court held that in absence of a registered sale deed, there was no valid sale in favour of the defendant and, as such, decided Issue Nos. 5 and 7 against him. The lower appellate Court also relied on Section 54 of the Transfer of Property Act and held that Ext. "kha", the Hand-note, and Ext. "ga", the affidavit, did not constitute a valid sale. That apart, the lower appellate Court opined that Ext. "kha" and Ext. "ga" are forged documents. On the evidence on record, the learned lower appellate Court held that tenancy was established and that defendant is a defaulter in payment of rent.

6. The appeal was admitted to be heard by an order dated 15.03.1994 on the following substantial questions of law:

"(i) Whether the appellant has got a substantive title over the suit land which was a land converted to periodic patta on the strength of Ext. -"kha" and Ext. -"ga"?"

7. Mr. M.H. Choudhury, learned counsel for the appellant has submitted that the appellant is in possession of 2 Kathas of land on the strength of purchase made vide Ext. -"kha" and Ext. -"ga" when the land was covered under Annual Patta. It is submitted that sale deed could not be executed and registered as at the relevant time there was prohibition of sale of Annual Patta land. It is submitted that now that the land has become periodic patta land, the appellant is entitled to have right, title and interest over the 2 Kathas of land. He has submitted that it has been wrongly stated in Schedule-A of the plaint that the appellant is in possession of only 10 Lechas of land. As the appellant was in possession of the 2 Kathas of land on the strength of purchase made, there is no question of his being a tenant under the plaintiffs. It is submitted that the learned Court below fell into error in not correctly appreciating Ext. -"kha" and "ga".

8. Mr. J. Singh, learned Senior counsel for the respondent has submitted that factum of tenancy and non-payment of rent by the defendant are concurrent finding of fact recorded by both the courts below. He has submitted that defendant's own brother, PW-3, has deposed against him. It is also submitted by him that no title can pass on the strength of the so-called Hand-note and affidavit, which also did not have any witness. The learned lower appellate Court had compared the signature of Lalit Chandra Das as appearing in Ext. -"kha" and "ga" with Ext. -5, an official document wherein signature of Lalit Chandra Das appeared, and resultantly held that Ext. -"kha" and "ga" are forged documents. Even if the observation of the learned lower appellate Court, that Ext. -"kha" and "ga" are forged documents, is ignored, then also on the strength of Ext. -"kha" and "ga", defendant cannot acquire right, title and interest on the basis of the said documents.

9. I have considered the submissions of the learned counsel for the parties and have also considered the materials on record.

10. In the case of Jainur Ali and Others vs. Mt. Chafina Bibi and Others AIR 1951 Guhawati 20 , which is a Division Bench judgment, it was held by Chief Justice Thadani as follows:

"It is clear that Rule 1(c) does not prohibit transfer of annual pattas. Indeed, it permits transfers but transfers are limited in their duration to the period covered by the annual patta. The correct interpretation, in our view, of Section 11 and Rule 1(c) framed under the Assam Land and Revenue Regulation is that when an annual patta holder purports to transfer his ownership in such land for consideration, the transferee takes good title to the property subject, only to the paramount title of the Government, that is to say, if the Government so chooses it may, at the expiry of the period of the annual patta, refuse to grant an annual patta to the transferee. That however, is a matter between the Government and the transferee and not a matter between a transferor and transferee."

11. The limited right of user or the possessory right conferred by the Annual Patta can be transferred and such transfers are valid between the parties. It will, however, be subject to the paramount title of the State. Until the Annual Patta is cancelled or notice for non-renewal is given, it confers title upon the Patta holder to whom the Patta was issued. The possession of the transferee would be as good as that of transferor and the State has the paramount title over the land.

12. The defendant has not brought on record any evidence as pleaded in the written statement that the sale deed could not be executed because of ban imposed by the Government on sale of Annual Patta land. Section 54 of the Transfer of Property Act provides that transfer of immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. In the instant case, there was no registered instrument. In [Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another](#), (2011) 10 AD 365 : AIR 2012 SC 206 : (2012) 169 CompCas 133 : (2011) 6 CTC 90 : (2012) 340 ITR 1 : (2011) 4 RCR(Civil) 669 : (2011) 11 SCALE 438 : (2012) 1 SCC 656 : (2011) 11 SCR 848 : (2011) 202 TAXMAN 607 , the Apex Court, in paragraph 18, has stated that a transfer of immovable property by way of sale can only be by a deed of conveyance (Sale Deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Thus, even though transfer of Annual Patta land is permissible in law, it has been rightly held by the courts below that the defendant did not acquire any title on the strength of Ext. -"kha" and "ga".

13. In view of the above, substantial question of law is answered against the appellant. Consequently, appeal is dismissed. No cost.

14. Send back the LCR.