

(2012) 02 CAL CK 0001**Calcutta High Court****Case No:** S.A. No. 317 of 1991

Durga Das Chattapadhyay

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Feb. 23, 2012**Acts Referred:**

- West Bengal Land Reforms Act, 1955 - Section 49, 49(1)

Citation: (2012) 3 CHN 289**Hon'ble Judges:** Tapan Kumar Dutt, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Tapan Kumar Dutt, J.

When the appeal is called out for hearing, none appears on behalf of the respondents. This Court has heard the learned Advocate for the appellant.

2. The facts of case, briefly, are that the suit property is a land vested with the State of West Bengal and the plaintiff-appellant claimed to be landless cultivator having a homestead land adjacent to the suit property. The plaintiff's case is that the defendant No. 2 on behalf of the defendant No. 1 had put the suit property to auction for long term settlement and fixed a certain amount towards salami and a certain amount towards rent and the said auction was held on 26.9.1969 openly and the plaintiff's bid was accepted by the defendant No. 2. According to the plaintiff, the plaintiff paid the salami and the rent for the suit property and the possession of the suit property was delivered in favour of the plaintiff. In spite of assurance the defendant No. 2 failed to issue a "patta" in respect of the suit property to the plaintiff and ultimately the local Tahasildar threatened the plaintiff with dispossession from the suit property and, thus, the plaintiff filed the suit concerned.

3. The defendant No. 1 i.e. the State of West Bengal contested the said suit by filing a written statement denying the material allegations made in the plaint. The

defendant No. 1 took the stand that the plaintiff and his family members possessed more lands than that which is stated in the plaint and the plaintiff is a school teacher. The defendant No. 1 also denied that the possession of the suit land was delivered in favour of the plaintiff. The defendant No. 1 also took the stand that there was no provision for enforcing the Government to settle the lands to the adjacent owner. The said suit came up for hearing and the learned Trial Court decreed the said suit in favour of the plaintiff-appellant by declaring the plaintiff's tenancy right in respect of the suit land and also the plaintiff's possession of the suit land was confirmed. The learned Trial Court restrained the defendants by an order of permanent injunction from interfering with the plaintiff's possession over the suit land.

4. Challenging the said judgment and decree passed by the learned Trial Court, the said defendant No. 1 filed the Title Appeal concerned in which the impugned judgment and decree has been passed. It may be recorded here that the suit filed by the plaintiff-appellant was numbered as Title Suit No. 65 of 1981 which was placed before the learned 1st Court of Munsif, Arambagh and by judgment and decree dated 28.5.1988 the suit was decreed by the learned Trial Court, as aforesaid. It may also be recorded here that the defendant No. 1 filed the aforesaid Title Appeal which was numbered as Title Appeal No. 80 of 1988 and such Title Appeal was allowed by judgment and decree dated 4.3.1989 passed by the learned Assistant District Judge, Arambagh.

5. The learned Lower Appellate Court held that there is no dispute with regard to the fact that the plaintiff is a school teacher and is a service holder getting a certain amount by way of monthly salary and, therefore, under the law the plaintiff cannot be settled with any kind of vested land. The learned Lower Appellate Court took into consideration the provisions of section 49(1) of the West Bengal Land Reforms Act, 1955. The learned Lower Appellate Court also found that the plaintiff has his own "bastu" land which is adjacent to the suit land and according to the learned Lower Appellate Court where a person has his own "bastu" land, he cannot be settled with another "bastu" land. Thus, the learned Lower Appellate Court found that the plaintiff is not entitled to get any decree in the said suit.

6. It may be recorded here that the learned Trial Court stressed on the grounds that the defendant authorities did not disclose the reason as to why the "patta" concerned was not issued in favour of the plaintiff and that the plaintiff's bid was accepted by the defendants. The learned Trial Court took into consideration the provisions of section 49 of the said Act of 1955 and observed that it deals with the principles of distribution of the lands vested with the Government and the mode of settlement and certain grounds have been enumerated in the section which disentitles a person from getting settlement of any "khas" land of the Government but the defendants did not disclose in the instant case that in view of any of such grounds prevailing the plaintiff was not favoured with the "patta". The learned Trial

Court was of the view that since the defendant No. 2 had accepted the bid money from the plaintiff, the defendant No. 2 is bound to issue the "patta" in respect of the suit land.

7. The learned Advocate appearing on behalf of the appellant submitted that when the auction was held, the plaintiff could not have been disqualified on the ground that he was a school teacher since the amendment, by introducing the second proviso to the said section, was made sometime in the year 1980.

8. It is clear from the reading of the second proviso to the said section 49 that a person who holds service cannot be qualified to obtain any settlement of land from the State Government. But even apart from the said provision, the 1st paragraph of section 49 of the said Act, 1955 stipulates that in case of agricultural land, the person in whose favour the land is proposed to be settled should intend to bring under the land under his personal cultivation, and in case of homestead land, the person in whose favour the land is proposed to be settled should not be having any homestead of his own, and intends to construct a dwelling house thereon.

9. In the present case there is no dispute that the plaintiff has his own homestead adjacent to the land in dispute. In the present case there is also no dispute that the plaintiff is a school teacher and, therefore, it will not be proper to assume that the plaintiff intends to bring the disputed land under his personal cultivation. In any event, the plaintiff has pleaded in his plaint that the land in dispute is required for the purpose of residence of himself and his family members. The plaintiff having his own homestead where he resides with his family is thus disentitled to any decree as prayed for in the said suit. It appears that the learned Trial Court omitted to consider this aspect of the matter. Simply because the defendants did not assign any reason as to why the "patta" was refused does not automatically entitle the plaintiff to obtain a decree in the said suit particularly when the relevant provisions of the statute concerned are against the plaintiff in the context of this case.

10. This Court is of the view that the learned Lower Appellate Court was right in dismissing the said suit by holding that the plaintiff is a school teacher and has homestead adjacent to the suit land. However, in case the plaintiff has paid any sums of money to the defendants in the suit in connection with the auction which was held sometime in the year 1969 and if the plaintiff is still entitled under the law to get the refund of such money from the defendants, the plaintiff may make appropriate application to the defendant authorities concerned and if such application is made the defendant authorities concerned will decide such application in accordance with law.

11. In view of the discussions made above and subject to the observations made above, this Court does not find any merit in the second appeal.

12. The instant second appeal is dismissed.

13. However, there will be no order as to costs. Urgent certified xerox copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.