(2012) 08 CAL CK 0011

Calcutta High Court

Case No: S.A. No. 438 of 2006

Smt. Gitabala Dashi @ Gita Rani Dashi		APPELLANT
	Vs	
Sri Fatik Ruidas and Others		RESPONDENT

Date of Decision: Aug. 10, 2012

Citation: (2012) 4 CALLT 586 : (2013) 1 CHN 211

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Amal Baran Chatterjee and Mr. Satadal Chatterjee, for the Appellant; Sajal Chel and Mr. Asit Baran Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This second appeal is directed against the judgment and decree dated June 14, 2006 passed by the learned Civil Judge (Senior Division), Arambag, District Hooghly in Title Appeal No.19 of 2005 thereby reversing the judgment and decree dated April 28, 2005 passed by the learned Civil Judge (Junior Division), 1st Court, Arambag in Title Suit No.144 of 1999. The plaintiff / appellant herein instituted a suit being the Title Suit No.144 of 1999 for declaration of title, confirmation of possession and other consequential reliefs stating, inter alia, that the suit property as described in the schedule to the plaint originally belonged to one Kedar Muchi, father of the plaintiff and the C.S. record of rights was prepared in his name showing as 16 annas owner. Kedar Muchi died after the Hindu Succession Act, 1956 leaving his wife, Ramanibala and three daughters, namely, Kalibala, Sukhabala and Gitabala (plaintiff). They inherited the property of Kedar Muchi. Kalibala died leaving without any child or husband. Her share was inherited by Ramanibala, Sukhabala and Gitabala. The heirs of Sukhabala relinquished their shares in the suit property in favour of the plaintiff and those heirs have been added as the defendant no.s 5 to 9. After the death of Ramanibala, the plaintiff became 16 annas owner in the suit property and she has

been possessing the suit property all along. One, Satish Ruidas who was a stranger of the suit property, got his name recorded in the R.S. record of rights in respect of 12 annas share in the suit property. The L.R. record of rights stands in the name of his successor, defendant no.4. The defendant no.4 threatened the plaintiff to dispossess her from the suit property. So, the suit has been filed.

2. The defendant no.4 only contested the suit by filing a written statement denying the contentions raised in the plaint. According to him, the C.S. record of rights in the name of Kedar was not proper. The plaintiff did not inherit the suit property as contended. Kedar Muchi died long time back before the enactment of the Hindu Succession Act. The R.S. record of rights had been duly recorded in the name of Satish Ruidas to the extent of 12 annas and the name of the wife of Kedar had been recorded rest 4 annas. The L.R. record of rights in the name of defendant no.4 had been properly recorded. The defendant is in possession of the suit property to the extent of 12 annas share for more than 12 years and so, the suit should be dismissed.

3. On consideration of the evidence on record, the learned Trial Judge decreed the suit on contests against the defendant no.4 and ex parte against the rest defendants without costs. The First Appellate Court reversed the said decree by allowing the appeal preferred by the defendant no.4.

4. Thereafter, this second appeal has been preferred by the plaintiff.

At the time of admission of the second appeal, the following substantial questions of law have been framed:-

I. Whether the learned court of appeal below committed substantial error of law in reversing the judgment and decree passed by the learned trial judge by totally overlooking the fact that the plaintiff had led sufficient evidence showing that there was no foundation of the entry in the Revisional Record of Rights and it was for the defendant no.4 to prove that notwithstanding the different entry in the C.S. Record of Rights there was justification of entry in the Revisional Record of Rights;

II. Whether the learned court of appeal below committed substantial error of law in reversing the judgment and decree passed by the learned trial judge by misapplying the principles which are required to be followed where there are conflicts of recording between two or more record of rights.

5. Upon hearing the Learned Counsel for the parties and on perusal of the materials on record and the written arguments submitted by both the parties, I find that the C.S. record of rights in respect of the suit property as described in the schedule to the plaint had been made showing Kedar Muchi as a tenant in respect of the suit property. But the R.S. record of rights had been prepared showing Satish Ruidas having 12 annas share and Ramanibala, wife of Kedar having 4 annas share in the suit property. Either of the parties is not in a position to explain the basis of

recording of the C.S. record of rights and the R.S. record of rights. Anyway, the C.S. record of rights had been prepared in the year 1932 and it is difficult for the parties particularly the persons who belong to backward classes and did not have enough education to say about the basis of the entry of the C.S. record. In the instant case, the plaintiff / appellant could not show how Kedar Muchi got his name recorded as a tenant in the C.S. record of rights. The defendant no.4 is not also in a position to deny that Kedar left behind his wife, Ramanibala and three daughters, namely, Kalibala, Sukhabala and Gitabala. The plaintiff has contended that Kalibala died without any child and husband and her share was inherited by Sukhabala, Gitabala and Ramanibala. There is no denial on the part of the defendant no.4. But it is the specific stand of the plaintiff that the heirs of Sukhabala had relinquished their right, title and interest in the suit property to the extent of 8 annas share in favour of the plaintiff. There is no document or paper to show such contention of relinquishment. Even it could not be stated when the heirs of Sukhabala had relinquished their shares in the suit property in favour of the plaintiff. In consideration of the nature of the suit property and the area of the land, it is expected that the valuation of such suit property must be more than Rs.100/- and so, a Registered Deed of Relinquishment is expected in case of relinquishment. Moreover, the contentions of the plaintiff that after the death of Kalibala, she inherited 8 annas share cannot be accepted inasmuch as Kedar left other heirs as stated above. In the circumstances, there having no deed of relinquishment, I am of the view that such contention of relinquishment of the plaintiff cannot be accepted. The contending defendant no.4 claims that Satish Ruidas got 12 annas share in the suit property. He is also not in a position to say how Satish got 12 annas share in the suit property. But there is no dispute on the contention of the defendant no.4 that he is the heir of Satish Ruidas. What I find is that the name of the defendant no.4 has also appeared as 12 annas share-holder in the suit property in the L.R. record of rights. The P.W. 1 has stated that she did not pay any rent to the Government for the suit property. In fact, the plaintiff has failed to produce any rent receipt to show that they paid rent to the Government in respect of the suit property at any point of time. Therefore, it is doubtful that the plaintiff had acquired 16 annas share in the suit property as claimed by her.

6. Under the circumstances, I find that a dispute arises between the C.S. record and the R.S. record and there is no clear evidence to find out which one represents the true picture relating to share and possession of the parties.

7. In such a situation in case of a dispute in between the C.S. record of rights and the R.S. record of rights, according to the decision of Mahabir Pandey and Others Vs. Sashi Bhusan Dubey and Others, the entry in the R.S. record of rights is to be presumed to be correct. In the said decision, the learned Single Judge had also held that the finding of the Lower Courts that correctness of entry in C.S. Khatian could not be rebutted is a perverse finding and hence unsustainable in second appeal. This decision is based on the decisions of AIR 1941 55 (Privy Council) Shri Raja Durga

Singh of Solan Vs. Tholu, and Hrishikesh Barik Vs. State of West Bengal and Others,

8. This being the position, the R.S. record of rights showing 12 annas share and 4 annas share in favour of the defendant no.4 and the plaintiff respectively should be presumed to be correct.

9. The defendant no.4 has also failed to produce any rent receipt in support of their claim of 12 annas share in the suit property.

10. During the argument, Mr. Amal Baran Chatterjee, learned Advocate for the plaintiff / appellant has referred to the decision of Nagar Palika, Jind Vs. Jagat Singh, Advocate, particularly the paragraph no.s 10 & 11 and thus, he has contended that when the Court of appeal does not come to a decision as to right, title and interest in the suit property by consideration of the materials on record and there is no clear finding as to possession, the decision of the First Appellate Court on the basis of record of rights prepared in the year 197475, cannot be supported.

11. With due respect to Mr. Chatterjee, this decision, I hold, is not applicable because the concerned R.S. record of rights had been attested in the year 1955 when there was no litigation at all and even the defendant no.4 was not born at all at that time.

12. So far as possession is concerned, both the parties have claimed possession over the suit property. While the plaintiff has claimed 16 annas possession over the entire suit property, the defendant no.4 has contended that he possesses 12 annas share in the suit property and he has produced L.R. record Exhibit No. C in support of his claim. The plaintiff did not produce L.R. record of rights possibly for the reason that it goes against the interest of the plaintiff. An Advocate-Commissioner was appointed to go to the locale and on inspection he submitted his report marked Exhibit 2 on behalf of the plaintiff. From such report, it appears that there are some rooms/huts on the suit land, but there is no clear indication as to which of the parties possesses the same. So, the report of the Commissioner cannot be stated to be in favour of the plaintiff. The defendant no.4 has stressed much on the ''Mimansha Patra'' marked Exhibit No. A. But I find that this is a document relating to an attempt of settlement on Shraban 10, 1406 B.S. meaning thereby during the pendency of the suit and so, this paper being a Salishi at the locale, I hold, should not be looked into decide as to who is in the possession inasmuch as it was not based on an enquiry. The plaintiff has failed to produce any convincing explanation as to why she did not record her name in the L.R. record of rights. The evidence of the P.W. 2 is to the effect that the plaintiff is in possession of the suit property. The P.W. 2 has stated that the plaintiff has her dwelling house on the suit land but some portion is lying vacant. Gita enjoys usufructs of the standing trees situated on the vacant land. He is illiterate. He is a person of 75 years of age, but I find that he cannot state the particulars of the property and so, it is difficult to accept his statement as regards the possession by the plaintiff. The learned Trial Judge did not

accept the ''Mimansha Patra'' on the ground that it was not a valid paper to act upon and I hold that the learned Trial Judge has rightly held so.

13. Anyway, I find that the plaintiff has failed to rebut the presumption of the entries in the R.S. record of rights in case of conflict between the aforesaid two record of rights. Alternatively, I hold that the plaintiff has failed to show that the entries in the R.S. record of rights and then those of the L.R. record of rights are wrong. Though the defendant could not show the basis of entries of the R.S. record of rights, the plaintiff cannot take any advantage from that fault. The plaintiff cannot succeed on the weakness of the defendant but she must succeed on her own strength of the case.

14. The learned Trial Judge has also recorded the demeanor of the P.W. 1 who is the son of the plaintiff to the effect that in giving answers to questions, he remained silent for 3-4 minutes for each question and thereafter, he deposed in an evasive manner. Though, it appears that the P.W. 1 is not educated enough and he can sign his name only, yet his demeanor at the time of giving evidence cannot be ignored. He became very much conscious as to what to be said, what to be admitted and what to be denied in order to win the suit. His statement shall be taken with a grain of salt.

15. Under the circumstances, I am of the view that the plaintiff has failed to prove her title to the extent of 16 annas in the suit property and the First Appellate Court has rightly observed that when the plaintiff has failed to prove her burden of proof, the presumption in case of conflict in between the C.S. record of rights and the R.S. record of rights, the latter would prevail. The contention contrary to such findings, I hold, cannot be accepted.

16. Since, the plaintiff has failed to adduce enough evidence in support of title and possession, I am of the view that the First Appellate Court has rightly held that the presumption of finally published R.S. record of rights and subsequently, the L.R. record of rights, has not been rebutted by the plaintiff. He has rightly held that the learned Trial Judge committed wrong in shifting the burden of proof upon the defendant no.4 to show the correctness of the R.S. record of rights and the L.R. record of rights and that at best, the plaintiff has 4 annas share in respect of the suit property. The plaintiff has her homestead on some portion of the suit property. The First Appellate Court has rightly held that the decisions of the learned Trial Judge on right, title and interest over the possession by the parties is wrong and the same could be modified in the manner as per R.S. record of rights and the L.R. record of rights. The First Court of Appeal has, therefore, not committed substantial errors of law in deciding issues of the suit. The substantial questions of law as framed are not sustainable and accordingly, there is no scope of interference with the judgment and decree passed by the First Appellate Court.

17. In that view of the matter, I am of the opinion that this second appeal is devoid of merits and that there is no scope of interference with the judgment and decree passed by the First Appellate Court.

18. This second appeal is, therefore, dismissed. The judgment and decree passed by the First Appellate Court is hereby affirmed.

19. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.