(1983) 12 CAL CK 0013

Calcutta High Court

Case No: A.O.D. No. 1038 of 1979

Hirendra Nath Mondal		APPELLANT
	Vs	
Rajendra Nath Satpathi and Others		RESPONDENT

Date of Decision: Dec. 23, 1983

Acts Referred:

- West Bengal Land Reforms Act, 1955 - Section 15, 15A, 18, 18(1), 18(1)

Citation: 88 CWN 304

Hon'ble Judges: Ashamukul Pal, J

Bench: Single Bench

Advocate: D.P. Mukherjee No. 2, for the Appellant;S.B. Bhunia and Dipak Kr. Chowdhury for Respondent Nos. 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

Ashamukul Pal, J.

This is an appeal from the judgment and decree passed by Sri A.N. Saha, Additional District Judge, 5th Court, Midnapore in Title Appeal No. 172 of 1978 affirming the judgment and decree passed by Sri P.B. Ghosh, Munsif, 2nd Court, Tamluk dated 20. 3. 78 in Title Suit No. 85 of 1972, decreeing the suit in favour of the plaintiffs declaring that the plaintiffs have right, title and interest and khas possession over the suit lands and restraining the defendants by permanent injunction from interfering with the peaceful possession of the plaintiffs over the lands in suit. The plaintiffs" case is that they inherited the suit lands from their father since his death in 1358 B.S. and possessed the suit lands in khas. Gangadhar, father of the defendants, was the Bargadar of the Ka schedule properties and used to cultivate it in Bhag system. The plaintiffs used to cultivate Kha and Ga schedule properties in khas. Gangadhar died on 5.2.56. Plaintiffs, after his death regained khas possession of the Ka schedule properties as a whole bringing the-reby all the properties Ka, Kha and Ga schedule, under their khas possession.

2. The defendants claimed Barga right in respect of the suit properties and as they claimed that they were the Bargadars, the plaintiffs filed the suit for the declaration of their right, title and possession as stated hereinbefore. The defendants" case is that they were the share croppers upto 1377 B.S. and no receipts were there because there was no system of giving such receipts. The defendants claimed receipts, plaintiffs refused to grant the same. Then the defendants kept their share of paddy after intimation to the plaintiffs, but the plaintiffs did not turn up where the paddy was stacked by the defendants. The matter was referred to the Bhagchas Officer and he ordered that the petitioner may file the Bhagchas case, but the plaintiffs, instead of proceeding with that case, filed this suit.

3. The learned Munsif has relied strongly upon Ext. 2, where the Bhagchas Officer has given clear decision that the defendants were not the Bargadars in respect of the lands in suit. Before the learned Munsif it was urged that the report that has been given, has been given by the J.L.R.O. and not by B.C.O. and J.L.R.O. and B.C.O. are two different identity and the report of the J.L.R.O. in the instant case should not be treated as report by the B.C.O. Therefore, the Court should not act upon it. To that the learned Munsif held that the J.L.R. O., Nandigram, has been vested with the powers of B.C.O. and only by inadvertence the- seal of J.L.R.O. has been put under the signature of B.C. 0. and on that he ruled out the submission made before him. He further observed that Ext.2, the report, is the final document so far as he is concerned and if the defendants wanted to challenge it, they could have preferred an appeal against it to the proper forum and he cannot arrogate himself to the position of the appellate court which the Act did not empower him to do.

4. The appeal. was preferred from the judgment of the learned Munsif and the learned Additional District Judge, after hearing the rival contentions of the parties and documents, upheld the decision of the learned Munsif and dismissed the appeal. He marked the said report as Ext. 2 which was not done by the learned Munsif to which strong criticism was made by Mr. Mukherjee and I rejected that argument, because it is a mere irregularity by not making it as exhibit by the learned Munsif. So long as the said report was there and marked exhibit in the appeal stage and even if there was any irregularity, that was cured.

5. On that Ext. 2, (report of the B.C.O.) the learned lower appellate Court held that there was no relationship between the plaintiffs and the defendants as Jotdar and Bargadar, that is to say, he amrmed the decision of the learned Munsif in that Court. He also held that the learned Munsif was not bound to act upon the report. Before the learned Court below argument was that the said report was made by the J.L.R.O. and not by the B.C.O. and so signing it as J.L.R. O., converted the report to a nugatory document. The learned Additional District Judge however rejected this contention on the ground that at the relevant time the J.L.R.O. acted as the officer duly authorised and putting the seal of J.L.R.O. was absolutely immaterial.

6. Another point was urged before the learned lower appellate court on behalf of the appellant herein that he is a Bargadar over the said land as heir. But this claim of Barga on the right of heirship was rejected by the learned Additional District Judge on the ground that the right of heirship was incorporated in the Act with retrospective effect from 13th July, 1970. "So when Ganga-dhar died, " the learned Additional District Judge observed, "section 15 of the W.B.L.R. Act was not in the statute book nor was in picture, plaintiffs" claim on the basis of the heirship of Gangadhar therefore is totally misconceived." I cannot but agree with the learned Additional District Judge with this observation of the learned Judge which is based on the very provisions of the Act itself.

7. In this matter Mr. Mukherjee wanted to look to the records and I had the records from the court below and kept the matter for further hearing on..... The matter was heard on that day and both the learned Counsel Mr. Mukherjee and Mr. Bhunia made their arguments after looking to the records.

8. Before me, the following points have been urged by Mr. Mukherjee.

9. His first point is that defendant No. 1 is deaf and dumb and for whom there is no proper representation in the appeal before lower appellate Court. The second point is that there is no appreciation of evidence by the Courts below. He contended that there was "total absence of consideration of oral evidence". His. third argument is that Ext. 2 cannot he held to be sacrosanct. The court can always go into it and scrutinise to arrive at a correct conclusion. His next argument is that the finding of the Courts below that the plaintiffs are in possession is erroneous and there is no evidence to that effect;

10. Mr. Bhunia, learned Advocate appearing for the respondents Nos. 1 to 4 referred to me order dated 3.11.78. By that order the defendant No. 3 was appointed the guardian of the defendant no. 1.

11. This defendant no. 3 is the appellant in this Court. The contentions sought to be raised by Mr. Mukherjee on this point is rather curious and also unacceptable. The trial Court duly appointed defendant No. 3 as the guardian and no flaw is there in his appointment and such an argument that the defendant no. 1 was not properly represented is rather an argument in futility.

12. Regarding the second point there was "total absence of consideration of oral evidence" I should only point out that the learned Munsif applied his mind with regard to the evidence will appear from the fact that he discussed some portion of evidence which was relevant for the purpose of coming to a decision and it is not always necessary for the Court to analyse the evidence item by item to come to his finding. If it appears that the learned Judge applied his mind with regard to the oral evidence as much as it was necessary to come to a finding the matters in issue it cannot be said that there is "total absence" of consideration of oral evidence as contended by Mr. Mukherjee. I have also looked to the evidence. The trial court had discussed the evidence both oral and

documentary for the purpose of coming to a decision and the lower Appellate Court affirmed the decision with reasons. Therefore in that respect too the contention of Mr. Mukherjee also fails.

13. Regarding his third contention that Ext. 2 cannot be held to be final his argument is that the learned Court below should have accepted Circle Inspector''s report and not the Ext. 2. In that connection I want to quote here the observations made by the learned Lower Appellate Court in this regard. "We are not concerned with the subsequent report submitted by the Circle Inspector.....that Circle Inspector is not an officer or authority envisaged in section 18 (1) of the West Bengal Land Reforms Act."

Under section 21(3) of the West Bengal Land Reforms Act it is the duty of the Civil Court to refer any question that arose before it whether a person is or is not a Bargadar to the officer concerned for his decision as specified u/s 18(1) of the said Act which was exactly done in this case. Perusing Section 18(1) and Section 21(3) of the West Bengal Land Reforms Act it appears to me that the courts below were quite justified in accepting the report Ext. 2 made by the duly authorised officer and acting in accordance with it. That u/s 18(2) which has been referred to me by Mr. Bhunia quite a wide range of disputes between a Bargadar and an owner has become referable to the officer concerned u/s 18(1) which will appear from the fact that the list is not limited to (as it was there originally) but enlarged by inserting the words "or otherwise" in Section 18(2) of the West Bengal Land Reforms Act. Undoubtedly "or otherwise" conveys on the plain grammatical construction a very wide range of disputes and any dispute between an alleged Bargadar and the owner can be referred to the officer concerned which arises in connection with the land between them and the dispute may not be limited only to those which are enumerated in Section 18, sub-section (1) of the West Bengal Land Reforms Act. The report of the officer (Ext. 2) is to be accepted unless it can be shown that this has been procured by some circumstances which vitiate any official document. In this connection I want to note that the appellant could have preferred an appeal from the decision contained in that report Ext. (2) but he did not choose to do so. All these facts expose the weakness of the merit of this appeal. Regarding the argument that Circle Inspector''s report should have been given precedence I only want to say that Circle Inspector is not an authorised officer in that regard and therefore his report has been rightly rejected by the court below.

14. There is another argument sought to be made by Mr. Mukherjee that the Barga right being heritable the appellant got a right to be a, Bargadar on the death of Ganga Narayan as the heir. But his argument cannot be accepted in view of the fact that this right on the death of a bargadar was given subsequently by amendment of the Act after the death of the appellant''s father. As a result the argument too loses its force. Moreover, here in this case the amendment (Section 15A of the Land Reforms Act) provided that where there was more than one heir the officer concerned will nominate one heir who is in a position to cultivate the land properly. None of the procedure was sought to be-followed. Mere plea does not give a right unless supported by proper legal action. Therefore, in any view

of the matter the appellant''s contention remains as unsubstantiated.

15. Mr. Mukherjee sought to contend that some documents filed before the Court below were not considered. Only because some documents were filied in the court below in lower Appellate Court the learned Lower Court was not bound to consider them. It appears that on the date of delivery of the judgment that is to say, on 19.3.79 those documents were sought to be filed and the learned Additional District Judge directed that they be filed. I do not find any unreasonableness or flaw or fallacy in it. It appears by implication the learned Additional District Judge did not take into consideration all those documents which were filed in such a late stage and he acted quite rightly.

16. Mr. Mukherjee sought to argue that the appellants are in possession which will appear even from Ext. 2 itself and for that he refers to the report Ext. 2 made by the officer concerned on 9th August, 1975 and also 21B of West Bengal Land Reforms Act. The report says that the defendants have been cultivating the land forcibly and have not delivered the shares for the last three years from 1972. The forcible cultivation apart from the element of illegality of it is not possession in true sense of the term; moreover apart from anything else, to attract Section 21B cultivation must be lawful. Cultivation of the land forcibly is not lawful cultivation and the said forcible cultivation may be stopped by any due process of law by assisting the rightful owner from being interfered in the matter of cultivation. Therefore I feel inclined to accept the decision of both the lower courts who found in favour of the plaintiffs in the matter of possession.

17. After hearing the rival contentions of the Counsel of the parties, looking to the evidence, oral and documentary I do not find any ground whatsoever to set aside the judgment and decree passed by both the Courts below. The reasons they gave to come to their findings are absolutely logical and legally sound and the decision of the lower appellate courts affirming the judgment and decree of the trial court is uninterferable. The appeal has been dismissed as against the appearing respondents nos. 1 to 4. So far as other respondents namely, 5 to 8 on whom service was not effected as the requisites were not put in as per Court''s order dated 11.2.83, the appeal is also dismissed against them. I make no separte order on the application filed on 21.6.83 in view of my order already passed.

Hence it is ordered : The appeal is dismissed. There will be no order as to costs in the appeal and the application.