

(2014) 05 CAL CK 0069

Calcutta High Court

Case No: S.A. No. 730 of 1990

Purna Chandra Jana

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: May 16, 2014

Acts Referred:

- Evidence Act, 1872 - Section 13, 35, 42, 43, 74

Citation: (2014) 3 CALLT 13 : (2014) 5 CHN 416

Hon'ble Judges: Asim Kumar Mondal, J

Bench: Single Bench

Advocate: P.B. Sahoo and Sudhakar Biswas, Advocate for the Appellant; Bikash Kumar Mukherjee, Advocate for the Respondent

Final Decision: Allowed

Judgement

Asim Kumar Mondal, J.

This appeal is directed against the judgement dated September 19th, 1989 and decree dated September 26th, 1989 passed by learned Additional District Judge, 6th Court, Midnapore in Title Appeal No. 297 of 1988 reversing the judgement dated July 13th, 1988 and decree dated July 23rd, 1988. One Purna Chandra Jana, Gangadhar Jana and six others filed a suit against Biswanath Roy and State of West Bengal and three others seeking relief for declaration and permanent injunction. The fact of the case which are necessary for the purpose of the present appeal is narrated below.

2. Suit property as described in the schedule belong to one Dinu Jana, Nirmal Jana, Gobinda Jana and Indra Narayan Jana. The parties have 1/4th share each in the property. The land was recorded in C.S. Khatian No. 24 of Mouza Tilakhulia. Nirmal Jana died leaving behind his widow Jalad Bala Jana as only heirs. She died leaving behind Atul and Tapasi as heirs of predecessor of the plaintiff. Dinu Jana died leaving two sons, Atul and Tapasi and his wife Bhusan Kumari. Bhusan Kumari died leaving Atul and Tapasi. Atul died unmarried. Tapasi died leaving his wife, two sons

and five daughters who are the plaintiffs of this suit.

3. By amicable partition among the co-sharers 2.50 acres of land which was recorded in Khatian No. 24 was allotted to Dinu Jana. Dinu Jana by a deed of gift in the year 1969 transferred the suit property to his wife Bhusan Kumari. Her two sons Atul and Tapasi inherited the said property after her death. On the death of Atul his heir devolved of his brother Tapasi and subsequently on his death it is devolved on the plaintiffs and they are possessing the suit property all along.

4. One Phani Bhusan Khan obtained one sale deed dated March 19th, 1949 in respect of 1.67 and 1/2 acres of land in plot No. 14 and 16 from Jalad Bala Dasi. Gobinda Jana and Indra Narayan Jana on its basis claimed 3/4th share, out of 2.5 acres of land and filed a partition suit being Title Suit No. 106 of 1949 at the Court of Munsiff, Midnapore implicating Tapasi and Atul as defendant No. 1 and 2 and plaintiffs as proforma defendants. The suit was dismissed. Court accepted Dinu Jana as the sole owner. Against the said dismissal decree Phani Bhusan Khan preferred an appeal being Title Appeal No. 12 of 1951 in the Court of District Judge, Midnapore and the said appeal had transferred the learned Sub-judge, First Court at Midnapore was also dismissed on contest. Then a second appeal was preferred to this High Court being S.A. No. 842 of 1952. The second appeal was also dismissed.

5. It is found that 67 decimals of land in plot No. 14 and 66 decimals of land in plot No. 14 of Schedule A and B are recorded in the name of Laxmi Priya Ray and in the name of Ajoy Kumar Hazra with a note of vesting to the Government of West Bengal. The records of rights is erroneous. The defendants have threatened to dispossess the plaintiff from the suit property. Hence the suit filed at the first instance before learned Trial Court being No. T.S. 46 of 1987.

6. Before the Trial Court the defendant No. 5 i.e. the State of West Bengal has only contested. The case of the defendant No. 5 is that property have been vested to the State and the possession has been taken under the provisions of E.A. Act and area of .46 acres has been allotted to some persons as Rayati as alleged by the State. Pattas have been distributed to them and they are exercising the right, title and possession of the suit property.

7. Learned Trial Court framed as many as seven issues and the evidences were led by the parties.

8. Learned Trial Court after considering the evidences and materials before him has been pleased to hold that Phani Bhushan Khan filed partition suit claiming 3/4th share in the suit property. On the basis of a sale deed executed by Jalad Bala Jana, Gobinda and Indra Narayan Jana. The learned Munsiff dismissed the suit by judgement dated October 7th, 1950 holding that Dinu Jana had title and possession over it. Phani Bhushan Khan preferred an appeal before title appeal No. 12 of 1981 in the Court of District Judge, Midnapore which was also dismissed finally Phani Bhushan preferred second appeal before this Court and the said second appeal

being S.A. No. 842 of 1952 also dismissed.

9. Learned Trial Court, therefore, held that the Title of Dinu Jana and his heirs in respect of the suit property has been established exclusively.

10. The defendants claiming their right, title and interest on the basis of record of rights in the name of Laxmi Priya Roy and Ajoy Kumar Hazra with a note to vesting to the State. The defendants/State failed to produce an iota of evidence in support of their claim, then the land in question was vested to the State and patta have been granted. Learned Trial Court came to the conclusion that the plaintiffs have acquired right title from their predecessor which have been conclusively established from Exhibit 1 i.e. the deed of gift and also from the judgement and decree of Munsiff, 2nd Court (exhibit 3B), the judgement of sub-judge in Title appeal No. 12 of 1951 which is marked as exhibit 3(d) and the Hon"ble High Court's judgement and decree of second appeal No. 842 which has been marked as exhibit 3 and 3A. Learned Trial Court has opined that there is no scope to believe without any iota of evidence that the then zamindar have taken away the suit property from the plaintiffs. The documents exhibited on behalf of the defendants have no material value in support of vesting of land to the government.

11. From the findings and observations of learned Trial Court it has been seen that learned Trial Court has relied the judgment and decree of learned Munsiff, 2nd Court, Medinipur dismissing the partition suit being T.S. No. 106 of 1949 by one Sri Phani Bhushan Khan. The decree and judgement passed by learned Munsiff, 2nd Court at Midnapore has been affirmed at second appeal by this High Court. So, there is nothing to disbelieve that the plaintiffs/appellants before this Court are in possession of the suit property at any period.

12. The State preferred appeal against the said judgement and decree of learned Munsiff, 2nd Court at Midnapore before learned District Judge at Midnapore, on the two points to show that the judgement and decree passed by the learned Munsiff was not justified. Firstly it is alleged that plaintiffs had not made the defendants as party in the suit as a recorded person and as such same is bad for defect of parties. As such no effective judgement could be passed in absence of such party. Secondly the learned Munsiff has heavily relied on the judgement passed in connection with the Title Suit No. 106 of 1949 by the Trial Court and also by the First Appellate Court and High Court to arrive at a conclusion that in fact there was an amicable partition between Dinu and his co-sharers. In such partition Dinu get the suit property exclusively and on getting such property he executed a deed of gift in 1916 in favour of his wife. In the first appeal it was contented by the learned Government Pleader that since the State was not a party in the suit the decision of the suit cannot be binding on the State. It is further submitted that there is no other evidence to prove the alleged amicable partition between Dinu and his co-sharers. The presumption of correctness for finally published record of rights cannot be ignored without any cogent evidence. Learned First Appellate Court, therefore, considered the question

as to whether the decision in Title Suit No. 106 of 1949 which was confirmed even by the High Court will be binding on the State of West Bengal which was not a party to the suit. Learned Judge, First Appellate Court held that State of West Bengal is not claiming in the suit property through Phani Bhushan Khan, the plaintiff/appellant by a previous suit, where it was proved that the said land did not belong to Phani Bhushan Khan. Learned Judge further opined that learned Munsiff has erred in law by placing too much reliance on the judgement of the partition suit paid by Phani Bhushan Khan in order to come to the conclusion that there was an amicable partition between Dinu and the predecessor-in-interest of the plaintiffs and his co-sharers and the suit property exclusively fell in the share of Dinu Jana. Learned First Appellate Court observed that C.S. record of right was recorded in the names of not only Dinu Jana but also his three other co-sharers and the rights of the parties have been stated in equal share in the property. It is also opined that there is nothing to show that the persons whose names were recorded in C.S. record of rights or their heirs were in possession of the suit property during the final publication of the R.S. record of rights. So, there is a conflict between entries of two record of rights and the latter entry must prevail. Finally learned First Appellate Court opined that plaintiffs/respondents failed to show that they were in possession at the time preparation of R.S. record of rights and as such R.S. record of rights are erroneous. In consequence the appeal was allowed and judgement and decree passed by the learned Trial Court was set aside.

13. The substantial question of law may be framed in view of the facts and circumstances of the cases of the parties as well as the question of law involved in the matter and raised by the learned counsel for the parties as follows:-

Firstly whether the learned Lower Appellate Court has committed substantial error in law in accepting the judgement passed in S.A. No. 842 of 1952 (arising out of T.S. No. 106 of 1949) was admissible and could be relied upon whether the plaintiffs/appellants has evidence to prove their title in regard to the suit property, even though the State of West Bengal was not a party to the suit.

Secondly whether the learned Lower Appellate Court has committed substantial error in law to hold that in the C.S. record of rights in the names of Dinu and three erstwhile co-owners demolished the story of amicable partition and the plaintiffs/appellants failed to rebut the presumption of record of rights as the same is just contrary to the decision, observation of this High Court in S.A. No. 842 of 1952 that the record was finally published shortly after the year 1322 B.S. and the major portion of the settlements proceedings must have been completed when the partition suit took place. This being the position the learned Lower Court was right in observing that the settlement record was not entitled to any great weight.

Thirdly, whether the learned Lower Appellate Court has committed substantial error in law filing to take note that presumption of revisional record of rights of the law in dispute as vested land has been rebutted by documentary and oral evidence

adduced by the plaintiffs/respondents more so when the State respondent has failed to bring any evidence in support of its stand of alleged vesting of the land?

14. Mr. P.B. Sahoo and Mr. Sudhakar Biswas appears on behalf of the appellants. Mr. Sahoo in course of his argument submits that in an earlier case being Title Suit No. 106 of 1949 instituted by Moni Bhushan Khan against the predecessor of appellants were confirmed up to this High Court and the right, title and interest as well as the dispute of the plaintiffs/appellants declared. Learned Counsel further submits that in view of such decision and adjudication iota between the title and possession of the appellants and, therefore, the revisional record of rights prepared the names of Laxmi Priya Ray and Ajay Kumar Hazra with vesting note cannot be considered in support of their right, title and interest and possession of the disputed land at any material point of time. Mr. Sahoo further submits and argues that Hon'ble High Court in Second Appeal being No. 842 of 1952 held that the partition amongst Dinu and three erstwhile co-sharers was affected and that was accepted as valid one so, regarding the title of the disputed properties, the plaintiffs/appellants as such acquired title by way of inheritance from their mother Prasun Kumari who got the property by deed of gift from Dinu. Therefore, the findings of the learned Lower Appellate Court is neither reasonable nor legal. Mr. Sahoo submits that the findings of learned Munsif was perfectly right to relies on the judgement and decree passed in title suit No. 106 of 1949 (Second Appeal No. 842 of 1952) and the comment of learned Lower Appellate Court has to reliance of the learned Munsif on the aforesaid judgement was not proper. Mr. Sahoo relied upon the decision of Hon'ble Apex Court reported in Union of India (UOI) and Others Vs. Vasavi Co-op. Housing Society Ltd. and Others, Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, AIR 1926 100 (Privy Council) and Surendra Kumar Vakil and Others Vs. Chief Executive Officer, M.P. and Others, Mr. Sahoo further contended that under the provisions of section 43 and 42 of the Indian Evidence Act, if a judgement for not inter parties, sought to be relied on not as a precedent but as a piece of evidence it should be tendered in evidence; Mr. Sahoo further submits that in view of the provisions of section 35 and 74 of the Indian Evidence Act, entrance in revenue records is not a proof of title or payment of rent from only statement of revenue purpose. It is for the parties to establish relationship of title to the property unless there is unequivocal admission. Mr. Sahoo submits that plaintiffs/appellants have proved their right and title portion from the predecessor and possession of documentary as well as oral evidence and therefore, the judgement and decree passed by the learned Lower Appellate Court are not sustainable in law.

15. Mr. Bikash Kumar Mukherjee appears on behalf of the respondents/State. Mr. Mukherjee in course of his submission supported the views of learned Judge of the Lower Appellate Court. It is submitted by Mr. Mukherjee that in the earlier suit being No. 106/1949, where plaintiff Phani Bhushan Khan claimed 3/4th share in the partition suit against Tapasi Jana and others without adding the State as party and as such the result of the said suit cannot be said vesting upon the State. It is also

submitted that the finally published record of rights i.e. the R.S. record of rights indicates that the property in question was vested to the State. The plaintiffs/appellants in fact, fails to adduce any short of legal or oral evidence representing the presumption of correctness of the record of right in favour of the respondent/State.

16. Certified copy of the judgement of title suit No. 106/1949 has been tendered in the suit as an evidence in support of right, title and interest. The said document has been marked exhibited. Learned Trial Court has placed reliance on the said judgement of the learned Munsif at Midnapore which was confirmed at the stage of Second Appeal by this High Court. The R.S. record of rights of the disputed property has been challenged and infringed. It is true that the title suit being No. 106/1949 was not inter parties. The State was not made party in the said partition suit. The fact remains that at the stage of second appeal the right, title and interest of the plaintiffs have been decided and confirmed in the said suit being T.S. No. 106 of 1949. So, in view of the ratio of reported decision of the Hon'ble Apex Court Surendra Kumar Vakil and Others Vs. Chief Executive Officer, M.P. and Others, and Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, and also in view of the provision u/s 43 and 42 and section 13 of the Evidence Act it is admissible as an evidence and could be relied upon by the appellants in the subsequent suit filed by the respondent for grant of relief against the appellants in respect of the same self property. Even though the respondent was not party in the earlier suit. From the findings of learned Trial Court it appears that the respondent/State failed to establish by adducing any piece of evidence that the property in question was vested and it was allotted to 11 persons by way of patta and the land in question are in possession of the patta holders.

17. In such circumstances I do not find any illegality or irregularity in the findings of learned Trial Judge to the effect that the plaintiffs/appellants are in possession of the suit property having full right, title and interest therein. It is the settled principle of law that mere entries in revenue records do not confer any title even the records are finally published.

18. In view of the decision reported in AIR 1926 100 (Privy Council) mutation proceeding is not a judicial proceeding and does not decide title and is no evidence of exclusion from property. The recording of name in the record of rights which are allegedly finally published is not a judicial proceeding and as such on the strength of said record of rights, the right, title and interest as well as possession of the appellants in the suit property cannot be excluded.

19. In conclusion I am of the view that the findings of learned First Appellate Court suffers from illegality and impropriety which requires interference of this Court. Learned First Appellate Court did not give any emphasis on the fact that the appellants are in possession and there is nothing to show that the alleged patta was given effect at any point of time. The right, title and interest which was challenged in

the suit and confirmed up to the Hon"ble High Court is binding upon the parties who are litigating in the present suit. The judgement in favour of the appellants cannot be denied or ignored as the same has not been rebutted by the State by adducing any iota of evidences.

20. Learned Lower Appellate Court has raised the question as to whether the decision in Title Suit No. 106 of 1949 it was confirmed even by the high Court will be binding on the State of West Bengal which was not a party to the suit. Learned Lower Appellate Court did not consider that the right, title and interest of the appellants has been confirmed by the court up to the stage of Second Appeal and the same cannot be denied by the State merely on the plea that State was not a party in the said suit. In view of my above discussion and also in view of the findings in the judgement of learned Trial Court I am of the opinion that the findings of learned Lower Appellate Court are not based on materials available in the record as well as related law and the ratio of judgements of the Apex Court. So, the judgement impugned passed by learned Lower Appellate Court is liable to be set aside. Thus, this appeal is allowed on contest without costs against the contesting respondent State. The judgement under challenge passed by learned Additional District Judge, 6th Court, Midnapore in Title Appeal No. 297 of 1998 is hereby set aside. Consequently the judgement passed by learned Munsif in Title Suit No. 46 of 1987 is hereby confirmed. Let a copy of this judgement along with the lower court case record be sent down immediately to the concerned Court below for information and necessary action.

Urgent Photostat Certified Copy of this order if applied for be given to the parties on priority basis.