

Maharajadhiraj of Burdwan, Udaychand Mahatab Chand

Vs

Subodh Gopal and Others

Civil Appeal No. 2412 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

17.12.1970

JUDGMENT

HEGDE, J. –

1. This is an appeal by certificate. The defendant No. 1 is the appellant in this appeal. Respondent No. 1 is the plaintiff in the suit. The material facts of the case are as follows :
2. Respondent No. 1 purchased Touji No. 6 in Mahal Roynager in a sale under Act XI of 1859 on January 6, 1936. That sale took effect from September 29, 1935. He took delivery of possession of the property purchased by him through the Collector of 24 - Parganas on June 4, 1936. Thereafter he got his name registered under the Land Registration Act in substitution of the name of the previous recorded proprietor. According to Respondent No. 1 he had a share in the suit property, but as his claim was denied by the appellant, he instituted a title suit in the Court of the Subordinate Judge, Alipore, against the appellant and others for a declaration of title and for joint possession to an undivided 1 anna 3 Gondas share in 74 Bighas 4 Cottahs of land in premises No. 2, Judge's Court Road, Alipore, Calcutta, which comprised former premises Nos. 5, 5/1 and 6, Alipore Lane and Nos. 13 and 14 of Bainabpara Lane and mesne profits. During the pendency of the suit 2 Bighas 1 Cottach of land out of the suit lands were acquired by the Government. Thereupon Respondent No. 1 got his plaint amended and confirmed the relief asked for to 72 Bighas and 3 Cottahs but he claimed a decree against the appellant for a proportionate share, i.e., Rs. 17,609/6/- from out of the compensation amount paid for the lands acquired. The suit lands are in Mouja Alipore. According to the respondent they are joint lands of Toujis Nos. 1 to 6, 8 to 16, 33, 51, 53 and 91 of the 24 - Parganas District, excepting 2 blocks of separately demarcated lands which are in Touji No. 1070.
3. The appellant denied the plaintiff's claim that the suit lands or any portion thereof were parts of Touji No. 6. According to him they were of his exclusive ownership and the plaintiff had no right, title or interest therein. In the alternative he pleaded that he had acquired permanent rights in those lands by being in exclusive possession thereof for a long time and further that Toujis Nos. 33 and 53 were divided. The other pleas taken by him and pressed in this Court will be considered at the appropriate stage.
4. The Trial Court came to the conclusion that 51 Bighas 17 Cottahs 1 Chittak in Mouja Alipore were joint lands of Toujis 1 to 6, 8 to 16, 33, 51, 53 and 91 and Respondent No. 1 had title to an undivided 1 anna 3 Gondas share therein as owner of Touji No. 6. Consequently it gave to Respondent No. 1 a decree for joint possession with the appellant of his undivided 1 anna 3 Gondas share and mesne profits. Further it decreed the first respondent's claim for his share in the compensation amount. The Court rejected the defendant No. 1's plea that Toujis 33 and 53 were

divided.

5. Defendant No. 1 appealed to the High Court of Calcutta against the judgment and decree of the Trial Court. The High Court agreeing with the Trial Court held that the division pleaded by the defendant No. 1 is not true. It also came to the conclusion that Mouja Alipore were the joint lands of Toujis 1 to 6, 8 to 16, 33, 51, 53 and 91. But on an examination of the oral and documentary evidence, it held that the extent of joint lands was only 25 Bighas 5 Cottahs 1 Chittak and 45 sq. feet. Accordingly it gave the plaintiff a decree for joint possession in respect of 1 anna 3 Gondas share in respect of those lands. It also decreed mesne profits but the amount of mesne profits was left to be determined by separate proceedings. It confirmed the decree of the Trial Court as regards Respondent No. 1's share in the compensation amount.

6. Both the Trial Court and the High Court have concurrently come to the conclusion that 25 Bighas 2 Cottahs 1 Chittak and 45 sq. feet in Mouja Alipore are joint lands pertaining to Toujis 1 to 6, 8 to 16, 33, 51, 53 and 91. This Court does not ordinarily interfere with the concurrent finding of fact reached by the courts below unless it is shown that any important piece of evidence has been ignored or any irrelevant consideration has entered into the decision of the courts below. The Counsel for the appellant contended that in arriving at their conclusions both the Trial Court and the High Court have overlooked Section 27 of Regulation VIII of 1793. This Regulation does not appear to have been relied on by any of the parties to the proceedings either in the Trial Court or in the Appellant Court, nor do we think that, that Regulation has any bearing on the issues arising for decision in this case. That Regulation says :

"When a portion of land stands in the joint names of several proprietors or of one for many, but each proprietor has his separate share in his own possession and management or in that of an agent for him, the settlement is to be made for each share with the person in possession and his land is to be held exclusively responsible for the revenue assessed upon it."

7. In the present case it is not the case of Respondent No. 1 that each proprietor in the joint estate had a separate share in his own possession and management or that of an agent for him; not do we think Section 23 of that Regulation which was repealed as far back as 1805 has any relevance for our present purpose.

8. So far as the question of division pleaded by the appellant in respect of some of the Toujis is concerned, the concurrent finding of the courts below is not liable to be re-opened.

9. It was urged on behalf of the appellant that the lands in possession of the appellant are not in excess of his share in that joint property; hence the plaintiff cannot get any relief in the present suit. No such plea was put forward in the Trial Court or in the High Court. The plea raised raises a question of fact. Hence that question cannot be gone into in this appeal.

10. In view of the finding of the High Court that 25 Bighas 2 Cottahs 1 Chittak and 45 sq. feet in Mouja Alipore are joint lands pertaining to Toujis 1 to 6, 8 to 16, 33, 51, 53 and 91, it must be held that Respondent No. 1 has a share in those lands.

11. We are unable to appreciate the contention of the appellant that he had acquired a permanent right in the suit lands in view of the fact that he was in exclusive possession of the same for long time. The appellant had not put forward a plea of adverse possession. Once it is held that he is a co-

owner of the lands in question, his possession however long it might be unless it is adverse to the other co-owners cannot confer on him any right.

12. It was next contended by the appellant that no decree for a share in the compensation amount could have been granted as the acquisition proceedings proceeded on the basis that the appellant was the owner of the acquired lands. This is an untenable contention. The acquisition proceedings could not have conferred any title on the appellant. The compensation amount paid to the appellant represents the value of the lands acquired. The appellant is liable to make over to Respondent No. 1 his share therein.

13. At one stage the learned Counsel for the appellant contended that the decree for mesne profits cannot be sustained as his possession cannot be held to be unlawful but at a later stage he gave up that contention because a decree for accounts might turn out to be more harmful to his client.

14. In the result this appeal fails and the same is dismissed with costs.

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