

SUPREME COURT OF INDIA

Amiya Bala Dutta

Vs.

Mukud Adhikari

C.A.No.5115 of 2002

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

23.02.2011

JUDGMENT

G.S.Singhvi,J.,

1. This appeal is directed against judgment dated 14.7.1998 of the learned Single Judge of the Gauhati High Court whereby he dismissed the second appeal filed by the Appellants against the judgment and decree passed by the Assistant District Judge, Barpeta (hereinafter referred to as "the lower appellate Court") in a suit filed by Balindra Narayan Adhikari (predecessor of the Respondents) for declaration and recovery of possession of the suit property i.e., land measuring OB-2K-10L situated at Sorbhog town under Domoka Saka Bousi Mouza.

2. The suit was dismissed by learned Munsif, Barpeta (hereinafter described as "the trial Court") on the ground that the Plaintiff had not produced any document to prove his title and the entries made in revenue records were not sufficient for declaring him as owner of the suit property.

3. During the pendency of the appeal, the Plaintiff and the Defendant died and their legal representatives were brought on record. After analysing the pleadings and the documents produced by the parties, the lower appellate Court held that the Plaintiff-Respondents have been able to prove their title. The lower appellate Court noted that as per the certified copy of Jamabandi Exhibit 1, Patta No. 329 containing dag Nos. 1310 and 1311 stood in the joint names of Balindra Narayan Adhikari (original Plaintiff) and Manomohan Dutta (original Defendant); that as per the endorsement in the remarks column of Exhibit Gha, the name of Balindra Narayan Adhikari was mutated in respect of the suit land measuring 2 kathas 10 lechas covered by new dag Nos. 1310 and 1311 along with Chandra Kumar Choudhury and Deb Kumar Chowdhury by right of purchase in terms of A.S.O.'s order dated 6.12.1962. The lower appellate Court then proceeded to observe:

“... It is not the case of the Defendants that these endorsement in the record of rights are erroneous. It is true that entry in the record of right does not create or extinguishes title and such entries are rebuttable. There is not an iota of evidence to show that Exts. 1 kha, ga and gha are erroneous. It must not be forgotten that the original Plaintiff and the original Defendant had since expired during pendency of the suit and the suit has been contested by their legal heirs. So no fault can be found with the Plaintiffs even if they failed to prove or produce the original sale deed in respect of a suit land. In the absence of any evidence that the entries in the record of rights were erroneous. I am inclined to accept the entries in the record of rights as correct. As per Ext. kha one Rati Kanta Choudhury was the original owner and pattadar of the suit patta No. 251 which corresponds to new patta No. 329. This new patta No. 329 relates to suit dag Nos. 1310 and 1311 as apparent from Ext. 1. Basanta Kumar Choudhury (d.w.3) is the son of said Rati Kanta Choudhury since then. In his evidence in examination-in-chief, he attempted to show that the suit land along with Borne other land was sold to the Defendants in the year 1957/1958 by their brothers Ramesh Choudhury, Chandra Kumar Choudhury and Hiranya Kr. Choudhury. In his cross-examination he has however, pleaded his ignorance whether his two other brothers Chandra Kumar Choudhury and Deb Kumar Choudhury had sold the suit land to the Plaintiff Balindra Narayan Adhikari. Then endorsement appearing in the Chitha Ext. gha shows that the suit land measuring 2 Kathas 10 lechas was mutated in the name of the Plaintiff Balindra Narayan Adhikari along with Chandra Kr. Choudhury and Deb Kumar Choudhury by right of purchase as on 6.12.62. This very endorsement appearing in Ext. gha and the plea of ignorance of D.W.3 about the sale of the suit land by their two brothers go to prove that the suit land was actually purchased by Balindra Narayan Adhikari. The trouble in fact, arose after the death of the original owner and pattadar Rati Kanta Choudhury. In his evidence, D.W.3 who is one of the sons of late Rati Kanta Choudhuri clearly stated that the Defendant Balindra Narayan's mother is his father's sister and his father during his life time gifted about 3/4 kathas of land to Balindra's father. After the death of Rati Kanta Choudhury his sons Chandra Kumar Choudhury and Deb Kumar Choudhury sold the suit land to the Plaintiff before 6.12.62 and his other brothers sold the suit land together with some other lands measuring in all 3 bighas 6 lechas to the Defendant, Manomohan since deceased through Ext. ka. The suit dag Nos. 1310 and 1311 contain in all 2 bighas 4 kathas 18 lechas of land and the Plaintiff claims to have purchased a portion thereof measuring 2 kathas 10 lechas only. Ext. 1 the certified copy of the jamabandi clearly shows that the suit (land) dags and patta stand in the name of the Plaintiff Balindra and the Defendant, Manomohan. When the patta stands in the joint names of the Plaintiff and Defendant, it can safely be held that the Plaintiff acquired his right and title on the suit land and the Plaintiffs are not expected to prove their title on the suit land by producing or proving any sale deed. The Defendant Amiya Dutta examined herself as D.W.1. She has also admitted in her evidence the fact of purchasing the same land which was in fact given to the Plaintiff Balindra Narayan. Towards the close of her cross-examination, she clearly stated that the suit dag Nos. 1310 and 1311 stand in the joint names of her husband and the Plaintiff, Balindra Narayan. She further stated

that this land was originally gifted to Balindra Narayan but they (the Defendants) purchased it. Thus, the very evidence of D.W.1 lends support to the Plaintiff's claim that they have title over the suit land. On the point of Plaintiff's possession over the suit land for a long time, Ranjit Das (P.W.3) and Aswini Deb Sarma (P.W.4) both residents of the same locality have supported the Plaintiffs. Their evidence is that the Plaintiffs are in possession of the suit land since the time of their memory till the Defendants trespassed thereon about 6/7 years before the date of their deposition in court. Both the P.W.s were examined in court on 1.9.87. Mukut Adhikari, P.W.2 is one of the Plaintiffs and he too deposed that they are in possession of the suit land for a long time by right of purchase. The fact remains that the Defendants too have their own land contiguous to the suit land, in the same dag and patta. No doubt, the sale deed, Ext. ka has a recital of the sale of the entire land of the suit dags. But recital alone cannot extinguish the Plaintiff's right and title over the suit land which the Plaintiff purchased and possessed for a long time. As has been mentioned above, both the original Plaintiff and the original Defendant has joint patta in respect of the suit dags vide Ext. 1. The Defendants somehow managed to make a recital in Ext ka that the entire land of the suit dags were sold to them by the original pattadars. As has been mentioned in the schedule of Ext. ka, the boundaries of the lands of the two pattas mentioned in the schedule of Ext. ka cannot be same and one. This also will indicate that the recital in the schedule of Ext. ka was only an empty formality. The suit land which was sold to the Plaintiff by two other owners and pattadars cannot be sold again to the Defendants. The Defendants might have purchased the lands of the suit lands of the suit dags excepting the suit land measuring 2kathas 10 lechas. The Plaintiffs right over the suit land cannot be extinguished by the action of the Defendants. The Defendants illegally entered the suit land only on the strength of Ext. ka though they were not in possession of the same till they illegally entered thereto. Thus, taking into consideration of the entire evidence on record both oral and documentary, I find that the Plaintiffs have right, title and interest over the suit land and the Defendants purchased the suit dags and possessed the same excepting the suit land....

(Emphasis supplied)

4. While admitting the second appeal, the High Court framed the following question of law: The appeal is admitted and shall be heard on the substantial question of law that whether the findings of the learned court below in regard to the title of the Respondents is not sustainable in evidence on record.

5. After hearing the parties and perusing the record, the learned Single Judge held that the question framed by the Court was not a substantial question of law within the meaning of Section 100(1) of the Code of Civil Procedure (CPC) and dismissed the second appeal by observing that the lower appellate Court did not commit any error by relying upon the mutation entries and other documents for recording a finding that the suit land was jointly owned by the original Plaintiff and the original Defendant.

6. Shri S.K. Bhattacharya, learned Counsel appearing for the Appellants vehemently argued that the finding recorded by the trial Court on the issue of title of the predecessor of the Plaintiffs was based on correct appreciation of the oral and documentary evidence and the lower appellate Court committed serious error by passing a decree in favour of the Respondents. Learned Counsel submitted that while the Appellants' predecessor had produced the registered sale deed to prove that he was having title of the property, the predecessor of the Respondents did not produced any evidence of title, but the lower appellate Court ignored the same and gave undue weightage to the entries in the revenue records and declared the predecessor of the Respondents to be rightful owner of the suit property. Shri Bhattacharya argued that even though the question framed by the High Court at the time of the admission of the second appeal may not be a substantial question of law within the meaning of Section 100(1) Code of Civil Procedure, the learned Single Judge should have framed the question of law relating to title of property and allowed the second appeal.

7. We have considered the submission of the learned Counsel and carefully gone through the record. In our view, the finding recorded by the lower appellate Court on the question of title of the suit land was based on correct appreciation of factual matrix of the case and the evidence produced by the parties, which included Jamabandi Exhibit 1 showing the original Plaintiff and Defendant as owner in equal share and the admission made by Appellant No. 1 and the learned Single Judge rightly refused to interfere with the judgment of the lower appellate Court because the Appellants could not point out any perversity in the approach adopted by that Court.

8. In the result, the appeal is dismissed.