

(2018) 11 GAU CK 0006
In the Gauhati High Court
Case No : Regular First Appeal No.65 of 2015

Abdul Jalil @APPELLANT@Hash Kharupetia Town Committee And Anr

Date of Decision : 01-11-2018

Acts Referred:

Assam Municipal Act, 1954 — Section 326
Code of Civil Procedure, 1908 — Section 80
Limitation Act, 1963 — Article 113

Citation : (2018) 11 GAU CK 0006

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. Ali, learned counsel appearing for the appellant. I have also heard Mr. S. Chauhan, learned counsel representing respondent no.1 and

Mr. C.K.S. Baruah, learned Government Advocate, Assam, appearing for respondent no. 2.

2. This first appeal is preferred against the judgement and decree dated 13/09/2015 passed by the Court of learned Civil Judge, Darrang, Mangaldoi in

Title Suit No. 12/2008, dismissing the suit filed by the appellant as plaintiff.

3. The case of the plaintiff, in a nutshell, is that he was the owner in possession of a plot of land measuring 3 Katha 12 Lechas covered by Dag Nos.

1036, 1050 and 1064 of periodic patta No. 794 of Kharupetia Town under Kharupetia Mouza, which is described in the schedule to the plaint.

According to the plaintiff, the Kharupetia Town Committee i.e. the respondent no. 1 had occupied the land on 14/12/2002 without the permission of

the plaintiff and thereafter started constructing a pucca road thereupon. The plaintiff had tried to stop the construction work but did not succeed in

doing so. As such, on 24/09/2007 the plaintiff had issued a notice under Section

326 of the Assam Municipal Act, 1954 demanding a sum of Rs. 7

lakhs to be paid to him as damages and compensation for using his land or to restore the possession of the scheduled land in its original form. The

notice was received by the defendant no. 1 on 27/09/2007. The grievance of the plaintiff is that despite receipt of the said notice, no steps had been

taken by the defendants to pay the amount of compensation as claimed by him, as a result of which, the plaintiff had to file Title Suit No. 12/2008, inter

alia, seeking a decree for realization of a sum of Rs. 5,63,976/- together with interest @ 10% to be calculated on the said amount till realization and for

other consequential reliefs.

4. The respondent no. 1 was impleaded as defendant No. 1 in the suit and had contested the plaintiff's suit by filing written statement, inter-alia,

denying the claim of the plaintiff. In its written statement, defendant no.1 had categorically pleaded that the plaintiff is not the owner of the schedule

land and that he does not have any right, title and interest or possession over the said land.

5. It appears that during the pendency of the suit the plaint was amended and the Secretary to the Government of Assam, Municipal Administration,

Dispur, Guwahati was impleaded as defendant no. 2. In the written statement filed by the defendant no.2, it has been stated that the defendant no.1

i.e. the Kharupetia Town Committee is a Local Self Government constituted under the provisions of the Assam Municipal Act, 1954 and, therefore,

the said body would be responsible for its own action for which, the State of Assam or its official cannot be held responsible.

6. Upon consideration of the pleadings of the parties, the learned trial Court had framed the following issues for trial:-

i) Whether there is cause of action for the suit?

ii) Whether the suit is maintainable in its present form?

iii) Whether the suit is bad for non joinder of necessary parties?

iv) Whether the suit is barred by law of limitation?

v) Whether the defendant no.1 is liable for any act done by the Kharupetia Town Committee?

vi) Whether the plaintiff is entitled to get the decree as prayed for?

vii) To what relief/reliefs the parties are entitled to?

7. Upon consideration of the evidence available on record, the learned trial court had decided the issue nos. (ii), (iv) and (v) against the

appellant/plaintiff. Consequently, the plaintiff's suit stood dismissed. Hence, this appeal.

8. By referring to the impugned judgement, Mr. Ali submits that the learned trial Court had committed manifest illegality in failing to consider the

documents marked as Ext. 3, 4 and 5, which would go to show that the appellant was the owner of the schedule land. Since the respondent no. 1 has

deprived the appellant of his immoveable property without following the due process of law or paying him just compensation, the plaintiff would have a

right to recover the amount of compensation claimed in the suit. He submits that the valuation of the land has been shown to be Rs. 7,00,000/- by the

Deputy Commissioner of the district and the said amount, if paid to the plaintiff, would be fair compensation for his land.

9. Mr. Chauhan, learned counsel for respondent no. 1, on the other hand, contends that in para 3 of the plaint, it has been mentioned that the

respondent no.1 had occupied the land on 04/12/2002 but the suit of the plaintiff was evidently filed on 10/06/2008 i.e. beyond the period of 3 years. In

view of the above, the learned trial Court had rightly decided the issue no. (iv) against the plaintiff by holding that by operation of the provisions of

Article 113 of the Limitations act, the suit having been filed beyond 3 years from the date of acquisition of the land of the defendant no.1, was barred

under the Law of Limitation. Mr. Chauhan further submits that the learned trial court had also rightly held that the suit of the plaintiff against the

defendant no. 2 is not maintainable in the absence of notice having been served under Section 80 CPC. That apart, submits Mr. Chauhan, the road has

been constructed for the benefit of the public of that locality. Therefore, without the title of the plaintiff having been established through pleadings and

the evidence on record, he cannot claim compensation with regard to the land even assuming that the same has been used by the defendant no.1.

10. Mr. C.K.S. Baruah, learned Government Advocate, Assam, appearing for respondent no. 2 submits that the State would not support any attempt

to take away the land of the plaintiff without following the due process of law but if the plaintiff is in any manner aggrieved in the matter, it would be

open for him to proceed against the defendant no. 1 in accordance with law and the respondent/ defendant no. 2 would not have any role to play in the

matter.

11. I have considered the submissions advanced by the learned counsel for the parties and have also gone through the materials available on record.

12. At the very outset, it would be pertinent to mention herein that the appellant has sought compensation in the suit on account of illegal acquisition of

his patta land by the respondent no.1 on 04/12/2002. It is the admitted position of fact that no proceeding under the provision of the Land Acquisition

Act, 1894 had been initiated in the matter. The suit of the plaintiff is exclusively based on the claim of title over the land but in the plaint, neither any

prayer for declaration of his title over the land has been made, nor has the plaintiff pleaded any fact on that behalf. Not only that, there is not even an

iota of evidence brought on record by the appellant/plaintiff to establish his title over the land. Although Mr. Ali has made an attempt to convince this

Court on the question of title of the plaintiff by referring to the evaluation certificate issued by the Circle Officer (Ext. 3), Revenue Paying Receipt

(Ext. 4) and Certified copy of an Will (Ext. 5) executed in favour of his client, yet, there can hardly be any doubt about the fact that none of these

documents can establish the title of the plaintiff over the suit land.

13. Law is well settled that a WILL, without a probate, would not have any force in the eye of law and, therefore, the plaintiff cannot be permitted to

claim title over the suit land based on Ext. 5. Since there is no document of title available on record, hence, I am of the view that the relief of payment

of any compensation to the appellant/plaintiff on account of alleged acquisition and/or taking over possession of the schedule land cannot be granted in

his favour.

14. In so far as the decision of the learned trial Court with regard to issue no. (iv) is concerned, here also I find that the plaintiff's suit was filed

beyond the period of 3 years from the date on which the cause of action had allegedly arisen. Since it is not in dispute that the suit of plaintiff would be

covered under Article 113 of the Limitation Act, hence, I am of the view that the issue No. (iv) has been rightly decided by the learned trial court

against the plaintiff/appellant and in favour of the defendants by holding that the suit is barred by limitation.

15. As regards the decision of the trial Court on issue no. (ii), as noted above, the learned court below had held the suit is not maintainable in the eye

of law due to failure on the part of the appellant/plaintiff to issue a notice under Section 80 CPC. While deciding the said issue, the learned trial Court had, however, not considered the fact that the plaintiff's suit was not instituted against the defendant no. 2 (State) but the said defendant was subsequently impleaded as party to the suit on the basis of the leave granted by the Court in an application filed by the plaintiff for amendment of the plaint. Be that as it may, since no relief has been granted in favour of the appellant/plaintiff in the suit, I am not inclined to go into the merit of the aforesaid issue in the present proceeding, any further.

16. For the reasons stated herein above, I am of the view that the learned Court below had rightly dismissed the suit by deciding the material issues against the appellant/plaintiff. As such, there is no illegality or infirmity in the impugned judgement and decree warranting interference by this Court.

The First Appeal is accordingly dismissed.

17. It is, however, made clear that dismissal of this appeal would not come in the way of the plaintiff in seeking the relief fair compensation for acquisition of his land, in accordance with law, if such a claim is otherwise maintainable under the law, subject to the Law of Limitation that may come into play. Send back the LCR. There would be no order as to costs.