

(2015) 03 GAU CK 0077

In the Gauhati High Court

Case No : Regular Second Appeal No. 15 of 2006

Akbar Ali Khan and Others

APPELLANT

Vs

Jamela Begum and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3, Order 7 Rule 3, 152, 47
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2015) 03 GAU CK 0077

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : A.R. Sikdar, for the Appellant; Abu Sharif, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Suman Shyam, J—Heard Mr. A.R. Sikdar, learned counsel appearing for the appellants. Also heard Mr. A. Sharif, learned counsel appearing for the respondents.

2. This second appeal is directed against the judgment and decree dated 16.09.2005 passed by the learned Civil Judge (Senior Division), Dhubri in Title Appeal No. 36/2004 allowing the appeal, thereby reversing the judgment and decree dated 26.05.2004 and 31.05.2004 respectively passed by the learned Civil Judge (Junior Division) No. 1, Barpeta in Title Suit No. 107/2002.

3. The plaintiff/respondents' case in brief is that a plot of land measuring 1 Bigha covered by Dag No. 1/425 situated at village Dhanbandha under Ghilajari Mouza was allotted to the plaintiff by the Govt. of Assam under the scheme for allotment of land to poor and landless people. Pursuant to the order dated 08.02.1996 issued by the Revenue Minister, Assam, the aforesaid land measuring 1 Bigha was allotted to the plaintiff which is the suit land described in the schedule to the plaint. It is evident from the records that earlier a large number of villagers from that area had approached this Court by filing different writ

petitions including Civil Rule No. 514/89 apprehending eviction from the land under their respective possession. In Civil Rule No. 514/89 the defendants/appellants, Akbar Ali Khan and Daulat Ali Khan were parties, whereas the plaintiff Abdul Kuddus (since deceased) was one of the petitioners in another similar writ petition pending before the High Court. The aforesaid writ petitions were eventually disposed of by this Court with a direction to the authorities to examine the claims of the writ petitioners for settlement of land in their favour based on their possession and until then the Revenue Authorities were restrained from evicting the writ petitioner therein. It appears that the order of allotment passed in favour of the respondents/plaintiff by the Revenue Minister is in pursuance to the direction issued by this Court by the order dated 12.04.89 passed in the earlier batch of writ petitions.

4. It is the case of the plaintiff that pursuant to the allotment of land the authorities had delivered possession of the said land in favour of the plaintiff. However, the defendants with a malafide intention to cause injury to the plaintiff, had threatened to dispossess the plaintiff from the suit land, as a result of which the plaintiff was compelled to file Misc Case No. 51/97 under Section 145 Cr.P.C., wherein and whereby the land in question was attached by an order passed by the learned Executive Magistrate. Subsequently, during the period in which the order of attachment was under force, the defendants forcibly dispossessed the plaintiff from the suit land. Eventually, by the order dated 18.06.2002 passed by the learned Executive Magistrate in the aforesaid proceeding, possession of land was declared in favour of the defendants. Such being the possession, the plaintiff was compelled to institute the present suit praying for a decree declaring his right, title and interest and also for recovery of khas possession in respect of the suit land, besides praying for other consequential reliefs.

5. The defendants contested the suit by filing written statement taking the formal pleas that there was no cause of action; that the suit was bad for non-joinder of parties; that the suit was not maintainable; that the suit was undervalued. Besides the above, the defendants had also taken the plea that the suit land has not been described properly so as to identify the same. The defendants, though admitted the allotment of 1 Bigha land made in favour of the plaintiff, stated that since there is no boundary of the land mentioned in the order of allotment, hence, the suit itself was defective. It is the case of the defendants that they have been living in the Dhanbandha since last 36 years and as per the order of the Hon'ble Gauhati High Court as mentioned above, the Deputy Commissioner, Barpeta had allotted 1 Bigha land to each of the defendants as well. The defendants had also admitted that as per the allotment order 1 Bigha land was given to the plaintiff in front of the Uttar Barpeta College, but according to them, the plaintiff took possession of the plot of land near the house of one Wazid Ali. After living there for few days, the plaintiff possessed the land of defendant No. 5, Akbar Ali who had been possessing the said land since last 36 years. The defendant therefore, prayed for dismissal of the suit.

6. On the basis of the pleadings of the parties, the learned trial Court framed as many as 6 (six) issues, which are as follows:--

"(1) Whether there is any cause of action for the suit?

(2) Whether the suit is barred by limitation?

(3) Whether the plaintiff has right, title and interest over the suit land?

(4) Whether the order of Executive Magistrate passed on 18.06.02 in connection with Case No. 51m/97 was illegal and irrespective in the eye of law?

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

(6) What other relief or reliefs the parties are entitled to?"

On appreciation of the pleadings as well as the materials on record, the trial Court dismissed the suit filed by the plaintiff by the judgment dated 26.05.2004 and decree dated 31.05.2004.

7. Being aggrieved by the judgment dated 26.05.2004 and decree dated 31.05.2004 passed by the learned Civil Judge (Junior Division) No. 1, Barpeta in Title Suit No. 107/2002, the plaintiff as appellant preferred Title Appeal No. 36/2004 before the Court of learned Civil Judge (Senior Division) Dhubri.

8. After hearing the parties as well as on evaluation of the materials on record, the learned First Appellate Court reversed the decree of dismissal passed by the trial Court on the ground and reasons mentioned in the judgment dated 16.09.2005 rendered in Title Appeal No. 36/2004 thereby decreeing the suit filed by the plaintiff.

9. Being aggrieved and dissatisfied with the judgment of reversal dated 16.09.2005 passed by the learned First Appellate Court, the defendants as appellants had preferred the Second Appeal. On perusal of the records, it appears that by the order dated 06.03.2006, this Court had indicated the substantial question of law that had been raised in the second appeal. However, it appears from the record that neither any substantial question of law was actually framed nor was the appeal admitted by this Court at any point of time. Notwithstanding the same, records were called for and the appeal was posted for final hearing. Be that as it may, since the records are available and parties have given their consent, hence this appeal has been taken up for disposal on merits after hearing both the parties.

10. Mr. Sikdar, learned counsel appearing for the appellants submits that a bare perusal of the plaint will go to show that the plaintiff has failed to give proper description of the suit land so as to satisfy the requirement of Order VII Rule III of the CPC. Such being the possession, the suit filed by the plaintiff is liable to be dismissed on this count alone. While relying upon a decision of the Orissa High Court reported in *Bandhu Das and Another Vs. Uttam Charan Pattanaik*, AIR 2007 Ori 24 : (2006) 2 OLR 80, he submits that though the allotment of land

measuring 1 Bigha in favour of the plaintiff is not in dispute, even in that case the suit filed by the plaintiff was not competent since the plaintiff has failed to give proper boundaries or any settlement map to identify the land. Mr. Sikdar further submits that his clients were also allottees of a similar quantum of land being the beneficiaries of the order passed by this Court in the earlier batch of writ petitions and therefore, the possession of his clients over the respective plot of land would remain protected under the order passed by the Division Bench of this Court in the earlier batch of writ petition. Mr. Sikdar also submits that his clients are in possession of the land in question on the basis of allotment granted to them as well under the order of the High Court protecting their interest. Mr. Sikdar has further contended that the allotment of 1 Bigha land made in favour of the plaintiff is in violation of the provision of the Settlement Rules and hence cannot be sustained in the eye of law.

11. Per contra Mr. Sharif, learned counsel appearing for the respondents submits that since it is not in dispute that his client was allotted the land measuring 1 Bigha under Dag No. 1/425 of Village Dhanbandha as aforesaid, hence, the learned First Appellate Court was justified in decreeing the suit filed by the plaintiff. He further submits that the particulars of the land as given in the plaint tallies with the particulars of the land that was mentioned in the order of allotment dated 08.02.1996. Therefore, it is not a case that the plaintiff has deliberately suppressed any particulars necessary for identification of the land. As such, the question of law urged by Mr. Sikdar to the effect that the plaintiffs' suit was not maintainable due to non-description of the suit land in compliance with Order VII Rule III CPC as well as the objection pertaining to non-compliance of the settlement rules in making allotment of the land in favour of the plaintiff does not arise in the facts and circumstances of the present case.

12. I have considered the rival submissions made by the parties and also perused the records. On proper scrutiny of the judgment passed by the Courts below it is apparent that the plaintiff is claiming right, title, interest and possession over the plot of land measuring 1 Bigha on the strength of the order of allotment dated 08.02.96. The defendants have admitted the said order of allotment and the same is not under challenge in the present proceeding. In that view of the matter, there cannot be any doubt of the fact that on the strength of the order of allotment dated 08.02.96, the plaintiff had become the owner in respect of the land measuring 1 Bigha under Dag No. 1/425. The only question, that however, would arise for determination is as to whether the plaintiff has been able to establish proper link between the order of allotment and the suit land by giving proper description of the land so as to identify the same.

13. In a catena of decision rendered by Hon"ble Apex Court as well as this Court it has been held that the provision of Order VII Rule III are directory in nature and question relating to proper identity and description of the suit land can be gone into even by the Executing Court, if necessary, at the time of execution of the decree. In the case of Pratibha Singh and Another Vs. Shanti Devi Prasad and

Another, AIR 2003 SC 643 : (2002) 10 JT 302 : (2003) 2 SCC 330 , the Hon"ble Supreme Court has held as follows:--

"When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After al a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be a lowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC."

From the above it is clear that because there is some deficiency in the description of the suit land, the plaintiff cannot be deprived from the fruits of the decree on the ground of such technicalities. This is not a case of deliberate omission on the part of the plaintiff.

14. A perusal of the order of allotment itself goes to show that the Revenue Authorities did not indicate the boundary of the land at the time of allotment of the land to the plaintiff. In that view of the matter, the plaintiff cannot be non-suited merely on such technical grounds, more so, when the plaintiff is not to be blamed for the same. It is also not the case where the plaintiff has failed to give any particulars regarding description of the land even after being directed by the Court. The exact configuration of the 1 Bigha land under the allotment order can still be ascertained and verified from the Government records.

15. As regards the submission regarding the non-compliance of the Settlement Rules I do not find any substance in the said argument made by Mr. Sikdar. Moreover, no such objection has been taken by the appellant before the Court below and hence, he cannot be allowed to urge such a point at this stage raising questions that may call for factual determination. That apart, the defendants themselves are claiming to be the beneficiaries of allotment of land allegedly made to them by following the same process. Such being the possession, I do not find any illegality or infirmity in the judgment and decree passed by the learned First Appellate Court. Accordingly, this second appeal would stand dismissed. It is however made clear that since the plaintiffs' claim is based on the order of allotment dated 08.02.96, the decree passed in the suit filed by the plaintiff would apply to the plot of land that has been actually handed over to the plaintiff by the Revenue Authorities.

16. At this stage Mr. Sikdar submits that since the possession of his client over the land has been protected by this Court by the order passed in the earlier batch of writ petition hence, such protection be extended further by this Court. The prayer of Mr. Sikdar is not sustainable for two reasons. Firstly, because by the order dated 12.04.89 passed by the Division Bench of this Court in the earlier batch of writ petition did not protect the possession of any of the petitioner over any specific plot of land. Secondly, the said order was to protect the petitioners from eviction till the claims of the applicants were looked into by the authorities. The order having been passed in the year 1989, the same cannot be held to be operation till today on the purported ground that the applications for allotment of land made by the defendants are still pending consideration before the Govt. The defendants have claimed that 1 Bigha land has also been allotted to each of them by the Govt. However, there is nothing on record to support the above plea. As such the prayer of the appellants/defendants cannot be granted. It will however, be open to the parties to take all such plea as may be permissible under the law before the Executing Court if and when the decree is put to execution.

17. Having regard to the facts and circumstances, there would be no order as to costs. Registry to send back the LCR.