
(1943) 06 CAL CK 0003
In the Calcutta High Court

Akshoy Kumar Banerjee

APPELLANT

Vs

Mahammad Hedayatulla and Others

RESPONDENT

Date of Decision : 01-06-1943

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : AIR 1944 Cal 73

Hon'ble Judges : Blank, J

Bench : Division Bench

Judgement

Blank, J.—The facts from which this appeal arises are not disputed. The plaintiff's case is that he purchased certain lands within the Tollygunge Municipality from the recor-ded owner by a kobala dated 3rd September 1936. On 7th September 1936, plaintiff applied for mutation of his name in the municipal records. The transferor gave notice of the transfer by letters dated 2nd December 1936 and subsequent dates. On 17th September 1936, the municipality asked the plaintiff " to produce documentary evidence to prove his title to the property." This is a printed form suggesting that the request to produce documentary evidence is the usual procedure. On 30th September 1936, the plaintiff produced the kobala before the overseer Bishnupada Mitra. The plaintiff produced his document again on 15th January 1937 and 3rd July 1937, in both oases before the Vice-Chairman. On 13th August 1937, the Chairman wrote to the plaintiff to produce his document once more. Thereafter the plaintiff sued for certain declarations of which declarations, that he is an assessee of the Tollygunge Municipality and entitled to be mutated as such in the municipal registers, are now material.

2. The defendant municipality raised certain issues of fact, none of which are now material. It also raised a number of issues of law. The trial Court found that the plaintiff had cause of action and that the suit was maintainable u/s 42, Specific Relief Act, and that the plaintiff was entitled to the declarations as mentioned above. The Court of Appeal below observed that the contest on

appeal was not on facts that the defendant contended that the suit was not maintainable; that the plaintiff was bound to produce his document of title under the law; that there was no cause of action and that the suit was barred u/s 42, Specific Relief Act. The Court of Appeal below observed at the outset that

the crux of the whole case depended on the question whether the municipality had any right to call for the title deed from the plaintiff with regard to his petition for mutation.

The learned Subordinate Judge discussed the argument in considerable detail but his finding came back ultimately to the starting point. The hearing in this Court has followed very much the same course. The Court of Appeal below found that as the municipality had not refused to mutate and as the case was still pending the plaintiff had no cause of action; further that the municipality had powers under the Act to call for the document of title; and that the finding of the learned Munsiff

there is no evidence that the municipality has denied the plaintiff's right to mutation or has disposed of the mutation case.

stood unchallenged by either party and consequently that Section 42, Specific Relief Act, is a bar to the suit.

3. In this Court the learned advocate for the appellant opened his arguments by contending that the defendant municipality was not entitled as of right to demand production of the document. He submitted that as there was no direct provision in the Municipal Act, on the principle that where a corporation is created by statute the powers of the corporation are to be found within that statute it followed that the defendant municipality had no right to insist on production of the document. The learned advocate admitted however that there was no judicial decision applying that principle to facts such as those from which the present case arose. Apart from the lack of authority for the proposition, that where a corporation is called upon to alter an entry in its registers the corporation cannot as of right require the person asking the alteration to satisfy it that everything is in order, it will be seen, from the discussion of the relevant sections of the Municipal Act that the municipality must be held to be impliedly authorised to call for documents in Order to satisfy itself even although the statute does not expressly authorise the municipality to do so. The learned advocate for the appellant, during the course of his arguments drew my attention to the correspondence between the plaintiff and the defendant municipality. One of these letters is relevant in this connection, namely Ex. 1 (m), dated 2nd April 1937, where the municipality asked for the document " so that the question of mutation can be considered according to law by the Commissioners at a meeting." It is certainly a proposition which would require affirmative authority to support it, that a municipality is not as of right entitled to call for papers in Order that it may be in a position to consider an application according to law, that is, to have all the materials before it which it considers it reasonably

requires.

4. The learned advocate for the appellant was at pains to discuss the relevant sections of the Bengal Municipal Act. He referred to Sections 144 and 138. The discussion of Section 144 is less material on the course the hearing has followed. Section 138 is more material. The power to mutate is vested in the Commissioners at a meeting, not in the Chairman, the Vice-Chairman or anyone else purporting to act on behalf of the Commissioners. Further when considering the "substitution , for the name of the owner of any holding of the name of any person who has succeeded by transfer or otherwise to the ownership of the holding" questions of ownership, questions of the person in whom the ownership vests after the transfer and questions of transfer arise. Apart from these questions which necessarily arise other questions, which may also arise on the facts of particular cases, do not appear to be excluded. u/s 138 (2) the Commissioners have to "give at least one month's notice to any person interested of any alteration which the Commissioners propose to make" and Sub-section (3) prescribes a somewhat elaborate procedure for the subsequent stages. These stages do not however concern us in the present case.

5. The learned advocate for the appellant submitted that applying these provisions to the facts of the present case, there was nothing to be done by the municipality between the receipt of notice of the transfer from the transferor and the transferee and the issue of notice u/s 138 (2). He was at considerable pains to argue that the correspondence between the parties showed that the municipality had all the information in their possession which they required, in Order to deal with the application for mutation, without calling on the plaintiff to produce his deed of transfer. He urged that the transferor and the transferee had both given notice, so that the municipality was prima facie satisfied that there had been a transfer and that as between owners; he pointed out that the printed form Ex. 1 (k), dated 17th September 1936, described the holding as "No. 78 Russa Road East, Southern" and that subsequent letters also gave the same description. He further submitted that notices given by the transferor and the transferee described the land as being the entire balance of the holding remaining on the municipal assessment and collection registers so that no question of holding or no holding arose. Here, however, the learned advocate appears to speak with incomplete accuracy. On reference to the documents I find that they use the expressions the balance, or residue, of the lands at Digambaritala. My attention has not been drawn to anything indicating that this description corresponds with the description in the municipal registers.

6. Thus it is not, in my view, possible to say that the papers before the municipal authorities showed that the holding or the remainder of the holding was being transferred and that the only question which arose was the question of changing the name of the holder which could and should have been dealt with without insisting on production of the title deed. Apart from the question, however, it seems to me that the scheme of the section is that, as the learned advocate for

the respondent put it, the Commissioners in making a mutation act in a quasi-judicial manner. Once this position is arrived at it follows that the Commissioners have a discretion, which no doubt must be exercised in a reasonable manner, to call for such evidence as they think fit. It appears that it is a usual practice to call for documents of title and it cannot be held a priori unreasonable that the Commissioners should call for documents of title in Order to satisfy themselves that the transaction is regular on the face of the papers with particular reference to the responsibility of the Commissioners for the collection of the rates-charged on holdings. The scheme of the section is that the matter of mutation has to go before the Commissioners at a meeting. Before this stage can be reached, there are two preliminary stages; first, the Commissioners, have to arrive at the stage where they propose to make a mutation, and secondly the Commissioners have to give at least one month's notice before making the mutation. Before the Commissioners arrive at the stage of proposing to make a mutation, the Chairman, the Vice-Chairman and the officers and servants of the Commissioners act in aid of the obligations placed on the Commissioners by when they collect such information as the Commissioners, as a matter of practice, require for the purposes stated. Indeed the learned advocate for the appellant frankly conceded that the word "propose" in Section 188(2), Bengal, Municipal Act, did not assist his contention. In my view, therefore, the Court of appeal below rightly held that the municipality had powers under the Act to call for the document of title. The reasons on which it held that it had such powers are certainly open to some criticism, but I do not propose to discuss detail the criticisms which the learned advocate for the appellant levelled against the reasons advanced by the learned Subordinate Judge as I hold that his conclusion is right on a consideration of the scheme and the language of the section.

7. This disposes of what is admittedly the crux of the case. Certain other arguments were however advanced and require to be treated if only briefly. The learned advocate for the appellant referred to Section 92(1) (c) of the Act and argued that in the present case there was more than an irregularity not affecting the merits. He submitted that the merits had been affected because the municipality by insisting on the production of the document had in effect refused mutation. The argument however does not commend itself to me. First, the refusal is not unconditional; the plaintiff could have complied with the condition by producing the document once more when the basis of the implied refusal would have disappeared. Secondly, on the view I have taken it cannot be held that the condition was irregular. The learned advocate dwelt on the harassment which had been caused to his client by the repeated requests of the municipality for the production of the title deed. While fully agreeing that the municipality has not treated the appellant in a businesslike manner I cannot hold that the action of the municipality goes to the extent of being unreasonable or highly improper. The appellant appears to labour under a sense of grievance, but not all grievances give causes of action. The argument was developed from another aspect, that of Section 42, Specific Relief act, and the learned advocate

submitted that the insistence on production of the document amounted to a denial that the appellant was entitled to the legal character he now claims. Here again the argument goes part of the way but not all of the way. There is no denial of the legal character. All that has happened is that the decision of the question relating to the legal character is suspended until the plaintiff complies with the demand to provide prima facie evidence, which the body vested with the decision of the question calls for, for the purpose of the said decision. Both Courts have held

that there is no evidence that the Municipality has denied the plaintiff's right to mutation or has disposed of the mutation case.

It is not necessary to decide whether this is a finding of fact or of law or of mixed fact and law; suffice it to say that if it is a finding of law it is in my view a correct finding. On the finding, Section 42, Specific Relief Act, has been correctly held by the Court of appeal below to be a bar to the suit.

8. The appeal is therefore dismissed. The question of costs causes me some difficulty. On the one hand the plaintiff came to Court prematurely. No doubt his patience was exhausted but his recourse against the municipality was not exhausted. Thereby he has caused a good deal of expense to the rate payers. On the other hand the action of the municipality cannot be described as exemplary. I cannot refrain from observing that the plaintiff has the sympathy of the Court. I do not however think it would be proper to interfere with the directions of the Court of appeal below as to costs, on the findings on which it arrived. The parties will therefore pay their own costs in this Court.