

(1911) 07 CAL CK 0027
In the Calcutta High Court

Askar Mian and Others

APPELLANT

Vs

Sasedali Bara Bhuyian and Others

RESPONDENT

Date of Decision : 27-07-1911

Acts Referred:

Citation : 31 Ind. Cas. 424

Hon'ble Judges : Richardson, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against a decree in favour of the plaintiffs-respondents for recovery of possession of land upon declaration of title. The Courts below have concurrently found that on the 3rd September 1896, the lands were purchased by the plaintiffs from the defendants. Notwithstanding this sale, the defendants got themselves registered under the provisions of the Assam Land and Revenue Regulation and kept the plaintiffs out of possession; the latter have consequently been driven to seek the assistance of the Court.

2. The defendants originally held under a settlement which was in operation from the 1st April 1883 to the 31st March 1898. In 1894, there was a survey for the purposes of a fresh settlement, but the term of the previous settlement was extended for two years and the new settlement did not take effect before the 1st April 1900. At the time when the new settlement was made, the defendants were able to obtain settlement from the Revenue Authorities, notwithstanding that they had parted with their rights, by reason of two circumstances; namely, first, that the settlement was based on the survey of 1894 when they were landholders lawfully in possession; and secondly, that after the transfer to the plaintiffs, the defendants took a sub-lease from them and were in actual occupation when the settlement was made in 1900. Subsequently, the plaintiffs applied to the Revenue Authorities to register their names; but their application was refused in 1907 by reason of the opposition offered by the defendants, who repudiated the sale. Consequently on the 1st September 1908, the plaintiffs instituted this suit for recovery of possession upon declaration of title. The

Subordinate Judge has found upon the question of title in favour of the plaintiffs and no attempt has been made in this Court to assail the accuracy of his conclusion. But it has been argued that the Civil Court is not competent to make a decree for possession, and in support of this view, reliance has been placed upon the cases of Madhub Nath Surma v. Mayarani Medhi 17 C. 819 and Patan Maria v. Bhabiram Dutt Barna 24 C. 239 : 1 C.W.N. 94. On the other hand, reference has been made by the plaintiffs-respondents to the decision in Hedlot Khasia v. Karan Khasiani 13 Ind. Cas. 377 : 15 C.L.J. 241 in support of the view that a decree for possession may be made by the Civil Court in favour of the successful plaintiffs. As the question raised is not free from difficulty and as its determination may affect the revenue administration of the Province of Assam, we thought it proper to invite the assistance of the Government Pleader who has now ascertained the views of the Revenue Authorities on the subject and has communicated them to us. After a careful consideration of the arguments addressed to us on both sides, we have arrived at the conclusion that it is competent to the Civil Court, not only to declare the title of the plaintiffs, but also to place them in possession of the disputed property by ejectment of the defendants.

3. Sections 8 and 9 of the Assam Land and Revenue Regulation, 1880, define the status of a landholder, as a person who has a permanent heritable and transferable right of use and occupancy of his land. Consequently, when the defendants, who were themselves landholders, transferred the property to the plaintiffs, the latter acquired the status of a landholder. The plaintiffs were, however, at the time when they applied for registration of their names, out of possession, and their application was properly rejected by the Revenue Authorities. But this did not affect their title as landholders. This is plain from Section 39 of the Regulation, which is in these terms: subject to the provisions of Section 151, the order of a Settlement Officer as to the person to whom a settlement should be offered, the amount of Revenue to be assessed and the nature and term of the settlement to be offered, shall be final, and a settlement concluded with that person shall be binding on all persons from time to time interested in the estate; but except as provided by Sections 35 and 36, no person shall, merely on the ground that a settlement has been made with him or with some person through whom he claims, be deemed to have acquired any right to or over any estate, as against any other person claiming rights to or over that estate." Sections 35 and 36 have no application to the case before us, as they refer to cases of refusal of settlement by the Revenue Authorities. It is consequently plain that the mere fact that the defendants have obtained a renewal of the settlement from the Revenue Authorities, does not create in them a right which they do not possess. We are not unmindful that these sections must be read along with Section 154 on which much reliance has been placed by the defendants-appellants. Sub-section (1) of Section 154, no doubt, provides that except when otherwise expressly provided in the Regulation or in rules issued under the Regulation, no Civil Court shall exercise jurisdiction in the

matter of questions as to the validity or effect of any settlement or as to whether the conditions of any settlement are still in force; but this provision must be read along with, and is obviously controlled by, the concluding clause of Section 39. It is, further clear that the plaintiffs do not raise any question as to the validity or effect of the settlement, nor do they seek to alter the conditions of the settlement by the Revenue Authorities. Their object is to substitute themselves in place of the defendants; in other words, to acquire the property as settled by the Revenue Authorities with the defendants. Consequently, it cannot be maintained that the object of this suit is to raise a question which falls within Clause (a) of Sub-section (1) of Section 154. Equally unfounded is the contention that the claim for recovery of possession is barred under Clause (m) of Sub-section (1) of Section 154, which merely provides that no Civil Court shall exercise jurisdiction in any matter respecting which an order expressly declared by the Regulation to be final subject to the provisions of Section 151, has been passed. The view we take, is strengthened by an examination of Clause (a) of Section 62, which lays down that nothing contained in Chapter IV and nothing done in accordance therewith shall be deemed to preclude any person from bringing a suit in the Civil Court for possession of, or for declaration of his right to, any Immovable property to which he may deem himself entitled. The suit now before us is clearly of this description. The application of the plaintiffs for registration was rightly refused by the Revenue Authorities; they were at the time out of possession, which, as is clear from Section 53, is an essential requisite for an order of registration. The only remedy of the plaintiffs was to institute a suit in the Civil Court, as they have done, for declaration of their right and for recovery of possession. The appellants have contended, however, that the plaintiffs should obtain a mere declaration in this suit, and should then apply to the Revenue Authorities to register their names and to place them in possession. But, apart from the fact that the Revenue Authorities cannot register the name of a person who is out of possession, we must bear in mind what was properly emphasised by the Government Pleader namely, that they have no power, in fact, they have no machinery, to give possession, except in the circumstances mentioned in Sections 12, 54 and 116, which do not cover the case before us. Consequently, if we were to accede to the contention of the appellants and to give the plaintiffs a mere declaration, the declaratory decree would be infructuous; in fact in this very case, the Board of Revenue, in dealing with the application of the plaintiffs for registration of their names, said in 1907 that they must obtain possession from the Civil Court before their names could be registered. We hold accordingly, upon a review of the statutory provisions on the subject, that the Civil Court is competent to make not only a decree for declaration of title but also for recovery of possession. This, as we have been informed by the Government Pleader, is precisely the view of the Revenue Authorities. We have been pressed, however, with the decisions of *Madhub Nath Surma v. Mayarani Medhi* 17 C. 819 and *Patan Maria v. Bhabiram Dutt Barna* 24 C. 239 : 1 C.W.N. 94 which to some extent support the contention of the appellants. But we observe that in those cases, the provisions of Section 62 were not brought to the notice of the Court; and we also-

notice that in the later case of Hedlot Khasia v. Karan Khasiani 13 Ind. Cas. 377 : 15 C.L.J. 241 a decree for possession on declaration of title was made, notwithstanding the earlier decisions. We follow accordingly the decision of Hedlot Khasia v. Karan Khasiani 13 Ind. Cas. 377 : 15 C.L.J. 241 and hold that the decree for possession made by the Subordinate Judge must be maintained.

4. The result is that the decree of the Subordinate Judge is affirmed and this appeal dismissed with costs.