

(2014) 11 TP CK 0013
In the Tripura High Court
Case No : RSA 51 of 2004

Badal Lodh Vs Abanti Kumar Roy

Date of Decision : 05-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 34

Citation : (2014) 11 TP CK 0013

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : D. Chakraborty, Sr. Advocate and H. Laskar, Advocate for the Appellant; S.M. Chakraborty, Sr. Advocate and S. Bhattacharjee, Advocate for the Respondent

Judgement

Utpalendu Bikas Saha, J.—This second appeal is preferred by the defendant-appellants against the judgment and decree of concurrence passed by the learned District Judge, South Tripura, Udaipur in Title Appeal No. 5 of 2003 upholding the judgment and decree dated 21.12.2002 passed by the learned Civil Judge, senior division, South Tripura, Udaipur in Title Suit No. 23 of 1998.

2. Heard Mr. D. Chakraborty, learned senior counsel assisted by Mr. H. Laskar, learned counsel for the appellants as well as Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel for the respondent.

3. The respondent-plaintiff filed a title suit No. 23 of 1998 in the court of the learned Civil Judge, senior division, South Tripura, Udaipur, inter alia, for declaration with consequential reliefs stating that the instant suit land is 0.15 acres in mouja Sabroom under old Dag No. 816(P) and under Old Khatian No. 393. In 1952 SDO gave him permission and in 1955, the District Magistrate & Collector gave allotment order in his favour regarding the aforesaid suit land. He paid premium (nazarana). In the land settlement operation, the entire land of Dag No. 816 measuring 0.23 acres was recorded in his name. He has filed one Title suit bearing No. 10 of 1977 against the State of Tripura and others regarding the portion of the suit land which was decreed in his favour and the

decree was also executed. Again he filed Title Suit No. 3 of 1986 against the State of Tripura and others regarding a portion of the suit land which was decreed in his favour and that decree was executed.

4. In both the execution as stated above, he got recovery of possession of the decreetal land. Thereafter the Govt. acquired three karas of land for Bekar shed from the plaintiff respondent and the same was also notified in the Gazette. The plaintiff got compensation for the said acquired land. The acquired land is in the northern part of Dag No. 816. In the southern side of the said plot, P.W.D. by force dispossessed the plaintiff respondent from 2 gandas of land. Remaining seven and half gandas is the instant suit land as discussed in the schedule "A" of the plaint which is bounded in the north by Bekar shed. In the south by Sabroom-Baishnabpur Road, in the east by Sabroom H.S. school and in the west by Sabroom Udaipur road. After obtaining decree and getting the decree executed and getting back possession, the plaintiff in the year 1992 constructed hut over the suit land. In the northern part of the instant suit land, he constructed a hut measuring 8 cubits X 9 cubits for the purpose of dokan viti and it was of half wall and remaining portion with bamboo fencing having tin roof.

5. In October, 1994, the defendant appellants dispossessed the plaintiff respondent herein from the said hut by force and they started occupying it as Junior Natya Sanstha club, the appellants herein. The defendant-appellants were occupying the land forcibly and this forcefully occupied land is bounded in the north by Bekar shed, in the south by plaintiff's own land, in the East by a lake and in the west by Sabroom Udaipur Road and within this boundary, the land is 3 karas.

6. The defendant appellants have been threatening the plaintiff respondent to dispossess him from the remaining portion of the suit land and in the last part of 1998; they threatened him to dispossess him from the suit land. The plaintiff respondent started construction of another hut measuring 15 cubits X 8 cubits in the south of the aforesaid hut from which he has been dispossessed by the defendant-appellants with corrugated tin sheets and fencing. This land has been described in Schedule "C" of the plaint.

7. On 30.8.1998 when the construction work in the hut on the C schedule land was going on, the defendant appellants openly threatened the plaintiff respondent and his men and also attempted to dispossess and dismantle the said half built hut, but failed due to strong protest of the plaintiff-respondent on "C" schedule land of the plaint. The cause of action regarding "B" schedule land arose in October, 1994 and cause of action regarding "C" schedule land arose on 30.8.98. The plaintiff therefore came with the aforesaid Title suit No. 23 of 1998 praying for decree declaring his right, title and interest in "A" schedule land of the plaint which includes "B" and "C" schedule land and also for granting perpetual injunction against the defendant-appellants from disturbing with the peaceful possession of the plaintiff-respondent in "C" schedule land and for recovery of the possession of the "B" schedule land.

8. The defendant-appellants filed written statements denying the pleadings of the plaintiff-respondent.

9. The trial court has framed as many as six issues and thereafter recording evidence on both sides and hearing arguments decreed the suit on 21.12.2002 in favour of the plaintiff respondent. Against the aforesaid judgment and decree, the defendant appellants preferred first appeal before the learned District Judge, South Tripura, Udaipur which was registered as Title Appeal No. 5 of 2003. In appeal, the defendant appellants challenged the findings of the learned trial court being erroneous, wrong and perverse which resulted miscarriage of justice.

10. It is also stated in the appeal that the learned trial court failed to consider the fact, inter alia, that the suit land is a Govt. khas land and Junior Natya Sangstha club has been possessing the same for more than 30 years continuously and in earlier suit, the club was not a party.

11. The learned first appellate court while considering the appeal has examined the following points:

(i) Whether the land was allotted by the appropriate authority in favour of the plaintiff and whether he fought two civil suits and got recovery of possession of the land or whether the suit land is a khas land and State is the necessary party?

(ii) Whether a portion of the land was acquired by the Government and compensation was allotted to the plaintiff finding him as the owner and possessor?

(iii) Whether the defendants have been possessing the land for more than 30 years and a right by way of adverse possession accrued in their favour?

(iv) Whether the learned Civil Judge (Senior Division) has committed any wrong in deciding the suit?

(v) Whether the plaintiff is entitled to get declaration and recovery of possession as prayed for?

12. Considering the aforesaid points, the learned first appellate court held that the plaintiff-respondent had fought two civil suits bearing No. T.S. 10 of 1977 and T.S. 3 of 1986 against the Government and got possession of the land by execution of the decree. More so, a portion of the land so acquired by the Government and the plaintiff respondent was compensated finding him to be the true owner/possessor of the land. The learned appellate court also affirmed the findings of the trial court that the Junior Natya Sanstha Club was registered on 25.3.1997 whereas the defendant No. 1 in his deposition stated that the club was established in 1971 in the suit land. It is also admitted position that the said club has no by-laws. Finally, the appellate court discussed about the Ext 6 and Ext. 7 which show that the land was allotted in favour of the plaintiff-respondent and the plaintiff-respondent paid Nazarana by challan and Ext 8 also shows that finally published khatian bearing No. 568 was prepared in the name of the

plaintiff-respondent in respect of the suit land. Finally upholding the decree of the trial court, the Appellate Court held that the plaintiff respondent is entitled to get declaration of his right, title and interest over the suit land as noted in Schedule-A land which included the land of B-schedule and the land of C-schedule of the plaint. He is also entitled to get recovery of possession of B-schedule land and also entitled to get perpetual injunction against the defendant appellants from disturbing the peaceful possession of "C" schedule land.

13. Being aggrieved by the judgment and decree passed by the first appellate court, the defendant-appellants preferred the instant appeal.

14. The instant appeal was admitted on the following question of law:

1. Whether the Ext 6 and 7 confers right, title and interest on the plaintiff?

15. The appellants were also given liberty to raise any other substantial questions of law on the basis of the Memo of appeal at the time of hearing of the appeal.

16. Mr. Chakraborty, learned senior counsel for the appellants while challenging the decree of the first appellate court as well as trial court would contend that in earlier Title suit No. 10 of 1977 and the Title suit No. 3 of 1986, the present appellants were not made parties, thus they are not bound by those decrees. He further submits that neither Ext. 6 nor Ext. 7 create any right and title of the plaintiff-respondent over the suit land as Ext. 6 is the challan by which the plaintiff-respondent deposited the Nazrana for the leased hold land and Ext. 7 is the approval of the District Magistrate & Collector regarding the lease. According to him, lease means the transfer of right of enjoyment of immovable property for a certain time, expressed or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service, etc and on lease property, a person cannot claim any title and the court also cannot declare any title in favour of the plaintiff-respondent which he does not have as per Section 34 of the Specific Relief Act, 1963.

17. Mr. Chakraborty, learned senior counsel appearing for the plaintiff-respondent while refuting the submission of Mr. Chakraborty, learned senior counsel for the defendant-appellants would contend whether the Civil Court committed mistake by declaring title of the plaintiff-respondent over the suit land or not that cannot be questioned by the defendant-appellants without challenging the decree passed by the civil Court in the former suits as the said facts were known to the defendant-appellants from the plaint itself. He further submits that the instant appeal was admitted on a mere question of law, not on a substantial question of law. According to him, the proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and the substantial question of law must be a debatable one, not previously settled by law of the land or a binding precedent and even if it is considered that the appeal is admitted on a substantial question of law as

formulated then also it has to be looked into whether such substantial question has any bearing or involvement in the case in hand. He further submits that in Vishwanath Agrawal Vs. Sau. Sarla Vishwanath Agrawal, , the Apex Court while considering the Section 100 CPC taking note of Vidhyadhar Vs. Manikrao and Another, held that, "it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion."

18. In the instant case, admittedly, the defendant appellants preferred the instant appeal against the concurrent findings of the courts below. More so, the decree of the earlier suit in T.S. 10 of 1977 and T.S. 3 of 1986 has become final and unless those decrees are quashed by the appropriate court of law, such a decree cannot be interfered with in the instant appeal.

19. This court has gone through the submission of the learned counsel of the parties. There is no doubt that the right accrued from a lease cannot be compared with the title, but such lease also creates a lease-hold right on the basis of which a person can possess the said land and subsequently when recording such lease hold property, a decree is passed in favour of the lease holder declaring his title and unless such decree is set aside by the appropriate court, the said decree cannot be disturbed in a subsequent suit when the same is not under challenge.

20. This court has also gone through Ext. 6 and 7. From those documents, it can easily be presumed that the plaintiff respondent has got the right over the suit land and by way of those documents, a title may be conferred upon the plaintiff respondent, and on creation of those documents, the civil court admittedly passed a decree declaring the title of the plaintiff respondent in earlier suit and such a title cannot be questioned by the present defendant appellants. More so, when the earlier suits were filed, at that time, the Junior Natya Sanstha Club was not in existence. Hence the question of making them party in the earlier suit did not arise at all.

21. In view of the above, no merit is found in the appeal. Hence it is dismissed. No cost.

Send down the L.C. records.