
(1985) 08 CAL CK 0009
In the Calcutta High Court
Case No : A.O.D. No. 616 of 1978

Baij Nath Prasad Gupta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-08-1985

Acts Referred:

Citation : 90 CWN 297

Hon'ble Judges : S.N. Sanyal, J

Bench : Single Bench

Advocate : Sudhis Dasgupta Subrata Nayak and Pradip Roy, for the Appellant; Tapas Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

S.N. Sanyal, J.—This is an appeal by the plaintiff against the judgment and decree of the learned District Judge, Murshidabad dismissing the plaintiff's suit after reversing the judgment and decree of the learned Munsif, 2nd Court, Jangipur.

2. The plaint case is that the suit property originally belonged to one Sikhar Basini Roy, pro-defendant No. 2, since deceased. Ram Kishan, Bhakat, the predecessor-in-interest of the plaintiff took settlement of the suit property from pro-defendant No. 2 in 1359 B.S. at an annual rental of Rs. 10/- and used to reside there with his nephew. Durga Prasad Bhakat who constructed a pucca house on the suit land. Durga Prasad died in 1359 B.S. leaving behind his two sons, plaintiff and pro-defendant no. 3. Thereafter Ram Kishan died in 1966 leaving his grandsons, plaintiff and pro-defendant no. 3, as his heirs. The plaintiff obtained the suit property by virtue of an amicable partition. The municipal tax for the house upon the suit land has been assessed in the name of the plaintiff since 1961. As the plaintiff was away from the suit property during the settlement operations, the suit property was recorded as khas land of pro-defendant no. 2 in the R.S. record of rights and the plaintiff has been recorded to be in permissive possession of the same. The suit land was also shown in the

R.S. Records as vested land. In the R.S. records the aforesaid entries are wrong and the defendant no. 1, state of West Bengal, is trying to disturb the plaintiff's possession. Hence the suit for declaration and permanent injunction. The defendant no. 1 contended that the suit land was in khas possession of the ex-intermediary and as the ex-intermediary did not opt to retain the same, it vested in the state as surplus agricultural land. The defendant no. 1 also denied the settlement in favour of the plaintiff.

3. The suit was originally decreed. Thereafter an appeal was preferred. The suit was sent back on remand for hearing of the suit afresh with an opportunity to the plaintiff to prove the rent receipt, marked "X" for identification. The parties were given opportunity to adduce further evidence. After remand, the plaintiff proved the rent receipt, (Ext. 6) by giving further evidence. The learned Munsif decreed the suit on the finding that Ram Kishan took settlement of the suit land from pro-defendant no. 2 and the plaintiff is the legal heir of Ram Kishan Bhakat. The learned Munsif found that the plaintiff had title to the suit property and he was in possession of the same. The learned Munsif further held that the defendant no. 1 failed to prove that the suit property was vested in the state. The entries in the record of rights are wrong. The learned Munsif granted a decree for declaration of title and permanent injunction in favour of the plaintiff. The defendant no. 1 challenged the said decision before the learned District Judge. The learned Judge held that the plaintiff had not succeeded in proving the tenancy right in the suit property. In coming to the said conclusion, the learned Judge seems to have accepted the contention made before him by the learned Advocate for the defendant that the suit land was not an agricultural land. Moreover, the learned Judge also held that there was no evidence that Sikhar Basini authorised the alleged Gomasta to grant the settlement of the suit land on her behalf. The learned Judge, thus, dismissed the suit. The plaintiff has challenged the said decision in the present appeal.

4. Mr. Dasgupta, the learned Advocate for the appellant, has argued that the judgment of the learned Judge is not a proper judgment at all as he has not taken into consideration the fact that the question on which he based his decision was not raised before the trial court. Mr. Dasgupta has argued that in the written statement, the defendant no. 1 had admitted that the suit land was khas, agricultural land of the defendant no. 2, the ex-intermediary. According to the defense case made in the written statement, the ex-intermediary did not opt to retain it and it vested in the State as surplus agricultural land. Mr. Dasgupta argued that in such circumstances there was no scope for the learned Judge to consider whether the land was agricultural or non-agricultural. Mr. Dasgupta thus submitted that the observation of the learned Judge that it was very difficult to believe that the suit land was agricultural land is erroneous. The next contention of Mr. Dasgupta is that it was never urged before the learned trial court that the person who granted the Dakhila had no authority to grant settlement of the suit land on behalf of Sikhar Basini, defendant no.2. According to Mr. Dasgupta, it was not open to the learned Judge to come to such conclusion in view of the case

made out by the parties before the learned trial court. Another contention of Mr. Dasgupta is that the plaintiff had challenged the correctness of the entries in the record of rights and the plaintiff had explained that he was away at the time of the settlement operation and thus he could not take sufficient step to get the suit property recorded in his name. It was specifically shown that the plaintiff had taken settlement of the suit property from Sikhar Basini and the plaintiff paid Municipal tax and was in possession. The entries in the record of rights lost all force. The learned Judge has not properly considered the findings advanced by the learned Munsif before reversing his finding.

5. Mr. Mukherjee, the learned Advocate, for the respondent, State of West Bengal, has argued that the rent receipt (Ext 6) was admitted into the evidence after objection of the defendant no. 1 and thus the defendant no. 1 is entitled to challenge the validity of the same. Mr. Mukherjee submits that even if it be held that the rent receipt (Ext. 6) has been proved but the contents of the documents have not been proved as the author has not been examined. In support of his contention Mr. Mukherjee has referred to the case of Madholal Sindhu Vs. Asian Assurance Co. Ltd. and Others, . In this decision it has been held that where the correctness of the contents of a document produced in Court is in issue that should be proved by calling the executor of the document as a witness. It is not enough to merely prove the signature or the handwriting of the person who is the only person who can depose to the correctness of the contents of the document. Another decision referred to by Mr. Mukherjee is the case of Mohammed Yusuf and Another Vs. D. and Another, . In this decision it has been held that even if the entire document is held formally proved, that does not amount to a proof of the truth of the contents of the document. The only person competent to give evidence on the truthfulness of the contents of the document is the writer thereof. Mr. Mukherjee has also referred to the case of Bishwanath Rai Vs. Sachhidanand Singh, . This decision lay down that the correctness of the contents of the letter could only be proved by examining the person who wrote the letter as a witness. Mr. Mukherjee thus argued that as the contents of the rent receipt have not been proved, there is no reliable evidence to establish that the settlement was granted in favour of the plaintiff's predecessor and the learned Judge was thus correct in dismissing the suit.

7. Mr. Dasgupta has argued that as this question was not raised before the Trial Court and this question being a question of act, the learned Judge ought not to have come to a finding without any evidence in support of the defence contention. Mr. Dasgupta has also referred to the Supreme Court decision in the case of P.C. Purushothama Reddiar Vs. S. Perumal, . The Supreme Court laid down in this decision that once a document is properly admitted the contents of that document are also admitted in evidence though those contents may not be conclusive evidence. Referring to the Privy Council decision in AIR 1943 83 (Privy Council) . Mr. Dasgupta has argued that the objection as to the mode of proof must be taken before the document is marked as an exhibit and not in appeal for the first time where the objection to be taken is not that the document is itself in-

admissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a Court of appeal and then complain for the first time of the mode of proof. Mr. Dasgupta has also referred to the case of Akram Ali v. Durga Prasanna Roy Chowdhuri, 14 C.L.J. 614. It is held that the receipts of which prima facie evidence of their genuineness are given, are sufficiently proved, though the signature of the Tehsildars upon them were not proved by any direct evidence. There is much force that the points raised before the learned Judge were not in accordance with the pleading. It appears that there is no dispute between the parties that the land was an agricultural one. The plaintiff's contention was that his predecessor took settlement of the suit land from the then landlord and constructed a structure on the same. Both the courts below have found that the plaintiff was in possession of the suit property and he was paying Municipal Taxes. The learned Munsif held that the plaintiff's predecessor Ram Kisan Bhakat took the settlement of the suit land from the defendant no. 2. No evidence was adduced on behalf of the defendant, State of West Bengal. In the written statement the defence contention was that the suit land was in khas possession of the ex-intermediary and as the ex-intermediary did not opt to retain the same, it vested in the State as surplus agricultural land. In such circumstances, I fail to understand how the learned judge could allow, the contention to be raised before him that the suit land was not an agricultural land. The learned Judge has not only permitted such contention to be raised before him but he actually came to the conclusion that the suit land was not an agricultural land. Any question of fact, which has not been pleaded before the trial Court, cannot be permitted to be raised before the Appellate Court. Moreover, a party cannot be allowed to go beyond the case made out in the pleading and submit something before the Appellate court which is contrary to his own pleading.

8. After the remand the plaintiff adduced further evidence and the Dakhila by which the settlement was taken was proved and marked Exhibit 6. There is no note in the Trial Court's record that any objection was raised at the time of the admission of the Dakhila. The only suggestion given to the plaintiff when he deposed and proved the rent receipt (Ext. 6) after remand was that his grandfather did not take settlement of the suit land and the settlement Dakhila (Ext. 6) was manufactured after the West Bengal Estates Acquisition Act came into force. The said suggestion was denied by the plaintiff. In such circumstances, it was not open to the defendant to urge before the learned Judge in appeal that the person who granted the Dakhila (Ext. 6) was not authorized to grant the same as there was no statement for want of authority. The question was not raised at the time of trial that the person who granted the Dakhila had no authority to grant the settlement. Had any such contention been raised, the plaintiff would have an opportunity to meet such contention. The learned Judge was thus in error in reversing the finding of the learned Munsif on the ground

that there was no evidence that Sikhar Basini authorized the alleged Gomasta to grant the settlement of the alleged suit land on her behalf. No such question was raised before the learned Trial Court. There was no scope for any evidence being led on that point. In such circumstances, it was not open to the defendant to object to the admissibility of the document, namely, Dakhila which was marked as Ext. 6 without any opposition from the defendant. The document was thus properly admitted and the contents of the said document were also admitted though the contents may not be conclusive evidence [see P.C. Purushottama Raddiar v. S. Perumal (supra)]. The defendant did not adduce any evidence to controvert the correctness of the content of the documents. In such circumstances, the learned Judge was in error in reversing the finding of the learned Munsif on grounds, which are clearly unsustainable in law. The learned Munsif had taken into consideration the relevant materials and he came to certain findings of fact giving reasons for the same. The learned judge did not properly consider the reasons advanced by the learned Munsif and reversed the finding of fact on the grounds, which are not made out in the defense case. The decision of the learned Judge, thus, cannot be upheld. In the circumstances, the appeal must succeed.

9. The appeal is allowed. The judgment and decree of the learned Judge be set aside and those of the learned Munsif be restored.

There will be no order as to costs.