
(1948) 11 GAU CK 0004
In the Gauhati High Court
Case No : A.F.A.D.No. 1500 of 1944

Chandra Nath Sarma

APPELLANT

Vs

Guna Bam Kalita

RESPONDENT

Date of Decision : 26-11-1948

Acts Referred:

Civil Procedure Code, 1908 — Order 1 Rule 3
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3

Citation : AIR 1949 Guw 21

Hon'ble Judges : Lodge, C.J. and Thadani, J

Bench : Division Bench

Advocate : M.N.Roy, B.B.Das, B.C.Barua, Advocates appearing for Parties

Judgement

Lodge C. J.

1. This is a second appeal from the judgment and decree of the District Judge, Assam Valley Districts, dated 8th July 1943 by which he set aside the judgment and decree of the trial Court which had dismissed the plaintiff's suit with costs.

[2] The suit was instituted by one Gunaram Kalita in the following circumstances. It appears that the plaintiff had taken "a settlement of a plot of land and a patta No. 4 / 6 on an annual lease for the year 193940. He applied to the revenue authorities for a periodic settlement. The appellants also applied for a similar settlement. The SubDeputy Collector of Kamalpun Circle decided to settle the land on the parties in equal shares and passed an order to that effect on 6th September 1940. The plaintiff appealed against this order to the revenue authorities but his appeal was rejected. The plaintiff then instituted the present suit for a declaration that he alone was entitled to get a settlement of the whole plot and impleaded the appellants only,

[3] It is not necessary to refer to the written statement of the appellants as we take the view that the plaintiff's suit was wholly misconceived from the point of view of the party sued, cause of action and the relief sought.

[4] The trial Court dismissed the plaintiff's suit on the ground that there was no irregularity vitiating the settlement and that the revenue authority acted in accordance with the rules contained in the Revenue Manual and that as joint possession of the parties had been established, the order of the revenue Court was not liable to be set aside. The lower appellate Court, however, took the view that there was a failure to follow the statutory rules and that on the basis of the statutory rules and the previous contract between the Government and the plaintiff, the plaintiff was entitled to the declaration sought.

[5] Now a suit for a declaration pre-supposes that the plaintiff has an existing legal character or an existing right as to property, which he wishes the Court to declare. In this case there is no question of any legal character involved. What the plaintiff seeks to do is to ask the Court to declare that the action of the revenue authorities was wrong and to compel them to settle the land in suit upon him without making the Government a party to the suit. If the plaintiff has any cause of action on the averments made by him on the plaint, it is against the Government and not against the appellants. The judgment of the lower appellate Court refers to the statutory rules and the contract between the plaintiff and the Government. If there was a contract in favour of the plaintiff or the statutory rules conferred any right upon the plaintiff, the remedy of the plaintiff if any was by way of enforcing the statutory rules, or the contract or by way of damages for breach of the statutory rules or the contract against the Government and not for a declaration against the appellants. In this view, we think the plaintiff's suit against the defendant was wholly misconceived as we have stated above and must be dismissed. We do not desire to prejudice the right of the plaintiff if he has any against the Government by expressing our view on the rights of the plaintiff in the matter of obtaining a settlement. But it appears to us that the substitution of the following for Cl. 3 of the form of annual lease might well affect the rights of the plaintiff in the matter of his insistence on a settlement:

"You shall have no right or title in the scheduled lands beyond the said period of one year and will not be entitled to compensation except as provided in cl. 5 for growing crops, fruit trees or buildings left standing on the land at the determination of this lease. But unless you or Government, shall on or before . . . serve on the other party with a written notice to the effect that a renewal of the lease is not desired in respect of all or any of the scheduled lands this lease shall be renewed for another year on such land revenue as Government may determine."

[6] In the view we have taken of the plaintiff's suit, it is not necessary to consider whether the provisions of S. 154 of the Regulation referred to in the judgment of the lower appellate Court operate as a bar to the jurisdiction of the civil Courts.

[7] In the result the judgment and decree of the lower appellate Court is set aside and that of the trial Court restored. The appeal is allowed with costs, throughout against the plaintiff,

Thadani J.I agree.