
(1999) 11 GAU CK 0018
In the Gauhati High Court
Case No : S.A. No. 109 of 1994

Chandramal Kalita and Another

APPELLANT

Vs

Punu Kachari and Others

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 160, 161, 164
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2000) 1 GLT 262

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Advocate : S. Medhi, R. Bora and S. Das Baruah, for the Appellant; S. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Singh, J.—The present second appeal has been filed by Shri Chandramal Kalita and Sri Lankeswar Kalita who were Defendants in T.S. No. 14/89. Sri Punu Kachari Plaintiff who is Respondent No. 1 in this appeal filed a suit for cancellation of sale deed No. 2988/80 on the allegations inter alia that the said sale deed was procured by the Defendants (Appellants-herein-in) by playing fraud and by taking undue advantage of his illiteracy and innocence under the cover of a mortgage deed which he had in fact executed in favour of the Defendants in respect of mortgage of the suit land. The said mortgage was redeemed by him and his possession over the mortgaged land was restored in the presence of the village Panchayat. The Defendants however raised dispute and got the suit land attached in proceedings u/s 145 of the Code of Criminal Procedure. From subsequent development it was discovered that under the cover of mortgage deed Defendants got a sale deed executed, hence the suit. Apart from the above an additional ground on which Plaintiff wanted the sale deed to be avoided cancelled was the plea of operation of statutory bar against acquisition of right, title and interest in the land by the Vandee as created u/s 164 of Assam Land and Revenue Regulation, 1885, hereafter referred for the

sake of brevity the Regulation. In this respect it was pleaded by him that the land in suit was situated in village Naptipara within Kaliagaon Mouza, which falls in the Tribal Belt. The Defendant being a non-tribal hence was not entitled to purchase the land from the Plaintiff who was tribal. On these two grounds the Plaintiff wanted the sale deed to be cancelled.

2. The Appellants filed their written statement and contested the suit inter-alia on the pleadings that the theory of execution of mortgage deed and its redemption by the Plaintiff was a false theory. According to the Appellant several sale deeds had been executed by the Respondent for sale of different partials of land from time to time out of total areas of 7 Bighas of land in his possession, the Plaintiff-Respondent had sold about 5 Bighas to him on different occasions. It was further pleaded that though the land in suit fell in the tribal belt and that he was a non-tribal whereas the Plaintiff was a tribal still the bar created by Section 164 of the Regulation did not have application in respect to the land in suit which formed part of the development scheme as framed for the area by the State Government and such land, which falls in the area which is covered by a development scheme is exempt from the bar of Section 164.

3. Both the parties led evidence in support of their respective contentions. The trial Court also examined some Court witnesses.

4. After examination and consideration of evidence tendered in the case, the trial Court found that the suit land fell within Tazial Tribal Block in Kaliagaon Mouza hence was subject to the bar created by Section 164, therefore, no title, right or interest in the suit land was possessed/acquired by Defendants from the sale deed No. 2988/90. On the basis of the above findings, the trial Court decreed the suit and declared the Plaintiff/Respondent to be the owner in possession of the suit land. Being aggrieved by the said judgment and decree Defendants/Appellants filed first appeal before lower appellate Court. Lower appellate Court too, after examination of the case of the Appellants, endorsed the findings of the trial Court expressing its agreement with the findings recorded and the view expressed by the trial Court. The lower appellate Court consequently dismissed the appeal. It is how present second appeal has been filed by the Defendant who does not seem to be satisfied from the two concurrent judgments given against him by the courts below.

5. Sri Medhi and Mr.s. S. Das Baruah, Advocates have appeared on behalf of the Appellants whereas Mr. A.B. Choudhury has appeared in the appeal on behalf of Respondents. It was contended by Mr. Medhi (i) a non-tribal who is permanent resident in a tribal area is not subject to the bar created by Section 164 in the matter of acquisition of right, title and interest in the land lying in tribal area, (ii) it was also argued by Sri Medhi that even in case of land lying in tribal belt which belongs to a tribal bar u/s 164 of the Regulation has no application if the area where the land is situated is covered by a government sponsored development scheme. According to him mere existed a development scheme duly issued by the State Government in regard to the area where the land in suit is lying hence

the land in suit was not subject matter of the bar of Section 164. (iii) Next contention of Sri Medhi is that there is no proof on the record of the fact that the Plaintiff/Respondent was a tribal and that the land fell in the tribal area regarding which Notification u/s 160 had been issued. Hence, in absence of the proof of issue of Notification u/s 160 it cannot be held that the land in suit was subject matter of the bar created by Section 164. His last contention was that the Courts below have recorded finding of fact against the Appellant without the existence of proper proof, hence the judgments and decree under appeal based on such findings are liable to be set aside by this Court.

6. Having fully considered the contentions of Sri Medhi in the light of the pleadings of the parties and evidence available on the records and the judgments passed by the Courts below I am of the opinion that the contentions raised by Sri Medhi lack substance which therefore deserves to be rejected.

7. So far the first contention of Sri Medhi is concerned, it is to be seen that u/s 164 bar is created against acquisition of right, title or interest by a non-tribal in land lying in tribal belt in case such land belongs to a tribal. In view of the bar created u/s 164 even a sale deed executed by a tribal in favour of a non-tribal for transfer of his interest in the land to the non-tribal would be inconsequential. Mr. Medhi's contention that permanent residents in the tribal area are exempt from the bar of Section 164 is unfounded. Clause (ii) of Section 164 cannot be read as an exception to Clause (i). Clause (ii) is an additional bar and use of the word "or" in Clause (i) has to read as "and" to signify that apart from non-tribals even persons who are not permanent residents of the tribal belt in question too would be subjected to the bar against acquisition of interest. For the above, reason, I am not inclined to agree with the contention of Mr. Medhi that even a non-tribal who is a permanent resident in the tribal belt where the land which is subject matter of sale is situated can acquire title in the land if such land is sold in his favour by a tribal. The word "or" used in Clause (i) of Section 164 offers no justification for raising such a contention, the contention is accordingly rejected being totally misconceived.

8. As regards the remaining three arguments of Mr. Medhi it would be seen from the pleadings of the Appellant himself in his written statement that he himself had admitted that the land in suit fell within tribal belt and that the Plaintiff was a tribal and the land was subject matter of the bar of Section 164 of the Regulation. The Appellant however tried to get out of the bar by raising the plea of the existence of a development scheme allegedly framed by the State Government in respect of the area where the land in suit was situated. This plea of the Defendant-Appellant did not find favour with the Courts below as the relevant notification by which the development scheme had allegedly framed and been applied in the area had not been filed in evidence by the Appellant. This plea was accordingly rejected on the record there exists a notification u/s 161 of the Regulation showing that the area where the land in suit is situated in tribal area. Thus the contention raised by Sri Medhi has no merit.

9. The contention that Respondent executed several other sale deeds apart from the sale deed in question too cannot be of any avail to the Appellant. The trial Court turned down this plea too obviously for the reason that no estoppel would operate against law. Where law prohibits doing of a thing doing of such thing cannot be allowed by the Courts of law simply because there is evidence to prove that the prohibited act was earlier done and it remained unchallenged. Once bar u/s 164 is found applicable then the plea raised by the Respondent regarding execution of other sale deeds of identical nature cannot destroy the impact of the bar of Section 164. The sale deed in question being hit by the bar of Section 164 the other ground of fraudulent execution of the sale deed under the cover of mortgage deed need not be decided.

10. No other contention was raised by Sri Medhi.

11. In the light of the above discussion, I find no merit in this appeal. The appeal is accordingly dismissed. There shall however be no order as to costs of this appeal.