

(2017) 07 GAU CK 0017
In the Gauhati High Court
Case No : 371 of 2016

DILIP KR. DAS, & ORS.

APPELLANT

Vs

MUSTT. AJUFA BEGUM BIBI @ AJUPA, & ORS.

RESPONDENT

Date of Decision : 26-07-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Assam Land and Revenue Regulations, 1886, <a href=7898 —
Regulation 150>Regulation 150, <a

Citation : (2017) 07 GAU CK 0017

Hon'ble Judges : Kalyan Rai Surana

Bench : SINGLE BENCH

Advocate : R.C. Das, S.C. Das, P. Buragohain, R. Choudhury, M. Hussain, A. Begum

Judgement

1. Heard Mr. R.C. Das, the learned counsel for the petitioners, Mrs. R. Choudhury, the learned counsel appearing for the respondents No.1 to 3 and Mr. S.P. Choudhury, the learned State Counsel appearing for the respondents No.4 to 7.

2. From the copy of the judgment dated 23.12.1987, passed by the learned Assistant District Judge, Dhubri, in T.S. No. 32/1983, the Respondents No.1 and 2 are the plaintiffs in TS No. 32/1983. The suit was for declaration and cancellation of sale deed, and 19 persons were arrayed as Defendants. The suit was decreed on 23.12.1987.

3. The predecessor-in - interest of the petitioners, namely, Dinesh Chandra Das was arrayed as Defendant No.15.He preferred an appeal, being T.A. No. 9/1994, which was allowed by first appellate judgment and decree dated 06.04.1995, thereby allowing his land purchased from defendants No.1 and 2 to stand excluded from partition. The plaintiffs assailed the same by filing second appeal, which was numbered as S.A. No. 101/95. This court, by judgment dated

11.01.2001, allowed the appeal by setting aside that part of the first appellate judgment by which the land of the predecessor- in- interest of the petitioners was ordered to stand excluded from partition.

4. During the pendency of proceedings of T. Ex. Case No. 2/2002, the Settlement Officer, Dhubri and Kokrajhar Districts, vide (i) letter No. DKSR. 36/2003/57 dated 12.05.2015, and (ii) letter No. DKSR.36/2003/60(A) dated 20.06.2016, directed the Assistant Settlement Officer, Bilasipara, to restore the name of petitioners No.1 and 2 in the Draft and Main Chitha by deleting the names of the respondents No.1 and 2 herein and to issue a separate patta. This order was assailed by the respondents No.1 and 2 herein before the Board of Revenue, Assam by filing appeal under the provisions of Regulation 147(a) read with Regulation 150 of the Assam Land & Revenue Regulation, 1886. The said appeal was numbered as Appeal No. 78RA (DBR)/ 2016. The said proceeding as well as order dated 06.09.2016, admitting the appeal and passing ad-interim stay is challenged by the petitioners by filing this application under Article 227 of the Constitution of India on the ground of being barred by res-judicata. It is projected that the petitioners had also assailed the same order before this Court by filing writ petition, being W.P.(C) No. 4287/16.

5. The learned counsels for the parties including the petitioner No.6 in- person have been heard at length. Owing to the nature of order being proposed to be passed, there is no need to burden this order with their lengthy arguments.

6. This Court in the case of Nongpok Sekmai Collective Farming Co-operative Society Ltd. & Ors. V. Sekmai Khumbi Joint Farming Co-operative Society Ltd. & Ors., AIR 1981 Gau 55, had declined to intervene under Article 227 of the Constitution of India, when there is no miscarriage of justice. In the case of Radha Mohan Pathak V. Upendra Patowary, AIR 1962 Gau 71, the Division Bench of this Court had upheld the preliminary objection on maintainability of a Letters Patent Appeal against the order passed by the Board of Revenue. In the case of (i) Mustt. Peshu Bewa V. Assam Board of Revenue, Guwahati & Ors., (1981) 1 GLR 184, and (ii) Darrang Industrial Corporation, Darrang, Tezpur & Ors. V. Assam Board of Revenue & Ors., (1982) 1 GLR 166, the Division Bench of this court had entertained writ petitions against the order passed by the Assam Board of Revenue. Till the recent time, in the case of Bikram Phukan V. The State of Assam & Ors., Writ Appeal No. 295/2016, decided on 05.09.2015, shows that this Court had been entertaining writ petition against the order passed by the Assam Board of Revenue. There is no material on record to show that the Assam Board of Revenue has been held to be either a Court or a Tribunal and, as such, without giving any finding on the issue, it is left open to be decided in appropriate case as to whether the Assam Board of Revenue is a Court or a Tribunal to make its orders amenable to extra-ordinary supervisory jurisdiction under Article 227 of the Constitution of India.

7. In the present case, it is seen that the petitioner has not moved the Assam Board of Revenue on the issue of maintainability of the proceedings of 78(RA)

(DBR)/2016 or for recalling the order dated 06.09.2016, issuing process on the respondents therein and, as such, the issue whether the said proceeding is barred by res-judicata cannot be decided by this Court as if it was exercising an original jurisdiction as a court of fact and when there is no finding on the issue sought to be raised herein, which can be said to be irrational or perverse or vitiated by error. Hence, this is not found to be a fit case for exercising extraordinary jurisdiction under Article 227 of the Constitution of India. In this regard, I find support from the case of *Jogendrasinghji Vijaysinghji V. State of Gujarat*, (2015) 9 SCC 1, the Hon"ble Apex Court has, inter-alia, held that jurisdiction under Article 227 of the Constitution of India is available only to adjudicate on the validity of judicial acts and that it is not an appellate but a supervisory jurisdiction and that a superior court can only set aside or quash an order without jurisdiction or palpably erroneous order, but it cannot substitute its own views for those of the inferior court or tribunal. Hence, in the opinion of this Court, without the issue maintainability being raised before the Assam Board of Revenue, there is no assailable order in existence.

8. Hence, in view of the discussion above, this application stands dismissed. The parties are left to bear their own cost.

9. At this stage, the petitioners' side has referred to the following case citations as mentioned below. However, in view of the discussion above, the said cases are not found to be of any assistance to the petitioner under the facts and circumstances of this case. The cases are: (i) *K.P. Ranga Rao vs. K.V. Venkatesham & Ors.*, (2015) 13 SCC 514, (ii) *Harshad Chiman Lal Modi vs. DLF Universal Ltd. & Another*, (2005) 7 SCC 791, (iii) *Ouseph Mathai & Ors. vs. M. Abdul Khadir*, (2002) 1 SCC 319, (iv) *Pathumma and Ors. vs. Kuntalan Kutty & Ors.*, (1981) 3 SCC 589, (v) *Mannappa Manikappa Sheded & Ors. vs. Bhaskhrappa A Bhasana & Ors.*, AIR 1978 Karnataka 113, (vi) *Keshav Deo Tulshan vs. Jagadish Prasad Tulsha*, AIR 1973 Calcutta 83 and (vii) *In the matter of District Judge, Puri (Petitioner)*, AIR 1971 Orissa 89.