

(1974) 02 GAU CK 0008
In the Gauhati High Court
Case No : Letters Patent Appeal No. 1 of 1972

Haniabam Bapumacha Sharma and another	APPELLANT
Vs	
Haniabam Gokulchandra Sharma and others	RESPONDENT

Date of Decision : 19-02-1974

Acts Referred:

Limitation Act, 1963 — Section 27

Citation : AIR 1975 Guw 47

Hon'ble Judges : D. Pathak, J;Baharul Islam, J

Bench : Division Bench

Advocate : N. Ibotombi Singh, A.G, for the Appellant; M. Charugopal Singh, for the Respondent

Final Decision : Allowed

Judgement

Baharul Islam, J.—This appeal is directed against the judgment Passed by a learned Single Judge of this Court in Second Appeal No. 29 of 1970.

2. The plaintiffs brought the suit for declaration of title and for recovery of khas possession in respect of the suit land after evicting the defendants therefrom. The following genealogical table will be helpful in appreciating the facts:

(See Genealogical table on page 48)

According to the plaintiffs they were the agnates (wrongly written as cognates) of defendants Nos. 1 to 4 (hereinafter called the "defendants"). The plaintiffs' and defendants' common ingkhoh was once covered by patta No. 89/330-1. The land was partitioned into two ingkhohs covered by two separate pattas Nos. 89/330-1 and 89/446-1. The latter fell to the share of the plaintiffs and the former to the share of the defendants. At the time of the partition in Mutation Case No. 144 of 1939, the eastern half of the land covered by Dag No. 574 was not taken into account. So the plaintiffs later on instituted Misc. Case No. 178 of 1940-41. Chandrahas Sharma. father of defendants 3 and 4 objected to it, but the Settlement Officer decided that the said eastern half of the land covered by

the aforesaid Dag No. 574 fell to the share of the plaintiffs. This land is the suit land. The plaintiffs alleged that they were in exclusive possession of it for a long time. Chandrahas Sarma, during his lifetime, preferred an appeal against the aforesaid order of the Settlement Officer before the President Manipur State Darbar, but it was dismissed. He took another appeal to his Highness the Maharajah of Manipur, but that too was dismissed. In 1964 the plaintiffs filed a petition in the Court of the Settlement Officer, Manipur for demarcation of the land and the demarcation was allowed; but the defendants forcibly trespassed into the land: and hence the plaintiffs filed the present suit for reliefs above mentioned.

3. The defendants have filed a joint written statement. They have denied that the plaintiffs had any agnate relation with the defendants. They claimed that the ingkhol under patta No. 89/330-1 originally belonged to their predecessor-in-interest. Saiou Sarma, and that neither the plaintiffs nor their predecessor-in-interest had any interest therein. They deny that the plaintiffs were ever in possession of the suit land; they claim that they themselves were in continuous possession thereof. They also deny that the plaintiffs were the owners of the suit land by inheritance. In the alternative, they claim that they acquired title to the disputed land by adverse possession.

4. The learned Subordinate Judge, who tried the suit, after trial, held that the plaintiffs had acquired title to the suit land by right of inheritance and that the defendants had not acquired title thereto by adverse possession and thus he decreed the plaintiffs' suit.

5. On appeal, the learned Additional District Judge, held that Sajou Sarma and Baputomba Sarma were the real brothers and as such the plaintiffs were the agnates of the defendants. But, he held that there was no evidence to show that the disputed land was the ancestral land. He, however, held, on the basis of Ext. A/1, which was the decree of a Revenue Court having the force of a Civil Court decree, that the plaintiffs acquired title to the disputed land, but the learned Additional District Judge held that Article 142 of the Limitation Act applied to the case and as the plaintiffs have failed to prove that they brought the suit within 12 years from the date of dispossession, the suit was barred by limitation and hence he dismissed the plaintiffs' suit. The plaintiffs, then preferred the Second Appeal which was heard and disposed of by a Single Judge. The learned Single Judge held and in our opinion, rightly, that as the suit was filed in 1964. the Limitation Act of 1963 (hereinafter called the Act) would apply: but he has held that not Article 64 (equivalent to Article 142 of the Limitation Act, 1908) but Article 65 of the Act would apply to the present case. He, however, held that the defendants acquired title by adverse possession and as such, the suit was barred under Article 65 of the Act and hence, in the result, he upheld the decree of the learned Additional District Judge, and dismissed the Second Appeal.

6. On leave having been given by him, this Letters Patent Appeal has been preferred by the plaintiffs.

7. The first question for decision in this appeal is whether Article 64 or Article 65 of the Act would apply to the present case.

8. Article 64 and relevant portion of Article 65 may be quoted:

Description of suit.

64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.

65. For possession of immovable property or any interest therein based on title.

XXX

Period of Limitation.

Time from which period begins to run.

Twelve years.

The date of dispossession.

Twelve years.

When the possession of the defendant becomes adverse to the plaintiff.

XXX

X XX."

9. The law is well settled by the Supreme Court that when a suit is for possession of immovable property and is based on previous possession, and not on title. Article 64 applies, and when a suit is for possession for immovable property, but it is based on title, then Article 65 applies. In the case of Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, , their Lordships of the Supreme Court have held "Article 64 enables a suit within 12 years from dispossession, for possession of immovable property based on possession and not on title, when the plaintiff while in possession of the property has been dispossessed. Art. 65 is for possession of immovable property or any interest therein based on title." The law therefore is that when a plaintiff brings a suit for possession of immovable property basing his suit on title and his title is established, then Article 65 of the Act would apply and it will be the defendant's burden to prove that he has acquired title by adverse possession. In other words, he will be required to prove that he is in possession adversely to the plaintiff for the statutory period of 12 years. When however a plaintiff brings a suit for possession of immovable property but bases his suit on previous possession but not on title. Article 64 applies. In this case, there is a clash between the two kinds of possession - of the plaintiff as well as of the defendant and as the defendant is admittedly in possession, the plaintiff cannot set a decree unless he proves existing title. Hence, the burden is upon the plaintiff to prove that he has instituted the suit

within 12 years from the date of dispossession, and that his title has not been extinguished u/s 27 of the Limitation Act.

10. In the instant case, it has been found by the learned First Appellate Court that the plaintiffs have acquired title on the basis of Ext. All. He has found that Ext. A/1 was the order of a revenue authority, declaring title in favour of the plaintiffs. He has also found that this order has the value of the decree of a Civil Court in view of Darbar Resolution No. 2 of 25th August 1937. By that resolution the Land Revenue Courts were given powers to try a civil suit, inter alia, for any piece of land, or for a declaration of title to any piece of land, or for ejectment of any person from any piece of land, or for partition of any piece of land, or for laying down, modifying or confirming the boundaries of any piece of land, except when the dispute involved a question of disputed inheritance, in which case the dispute had to be heard by Civil Court. In the instant case, it has been found by the first Appellate Court, that no question of disputed inheritance was raised before the Revenue Court and therefore it was triable by the Revenue Court. This position has not been challenged before us by the learned counsel for the defendants. The plaintiffs therefore were rightly held to have established their title to the suit land on the basis of Ext. A/1. So Article 65 of the Act applies to the present case, and the learned first Appellate Court erred in holding that Article 142 (equivalent to Article 64) applied to the case.

11. The next and only other question is whether the suit is barred under Article 65 of the Act. Shri N. Ibotombi Singh, learned Advocate General, Manipur, appearing for the plaintiffs-appellants, submits that the first Appellate Court, which was the last Court of facts, has based its finding on Possession - finding the defendants to have been in continuous possession since 1940 - on surmises and conjectures, has omitted to consider material evidence on record which, if considered, would have shown that the plaintiffs, and not the defendants, were in Possession of the disputed land. He submits that the learned Addl. District Judge has omitted to consider Exts. A/5. A/6 A/7, A/8. A/10. B/4 and B/5 amongst others. There is force in this submission of the learned Advocate General. In particular we were referred to two of the documents Exts. A/5 and A/6. Ext. A/5 is a Dag Chitha of 1959 and Ext. A-6 is a Jamabandi of 1959. The Dag Chitha and Jamabandi are prepared in accordance with the procedure in Chapter V of the Manipur Land Revenue and Land Reforms Rules. 1961, (hereinafter called the Rules). Rule 56 of the Rules inter alia provides that the record-of-rights shall consist of Jamabandi. Rule 57 inter alia provides that the Survey and Settlement Officer shall cause Dag Chitha and Jamabandi to be prepared in Forms 7 and 8 respectively. Rule 66 sub-rule (1) provides that the Survey and Settlement Officer shall first cause to be prepared a Dag Chitha in Form 7. Column 3 of Form 7 is to contain the name, of the pattadar with father's name and address; column 1 is to contain the plot number and Column 2 the area of the plot. Column 17 is the column for remarks. The Dag Chitha and Jamabandi are Prepared after local investigation as to possession of the land. The local inquiry is made in a summary manner and if there be any dispute with

regard to the possession of any particular plot of land, under sub-rule (2) of Rule 66 it is to be decided on the basis of actual possession. Under Rule 67, sub-rule (1) after the preparation of the Dag Chitha but before the record attestation begins, the Survey and Settlement Officer shall cause a draft Jamabandi to be prepared. The field which have been found in the possession of each land-holder and the classification of each field as entered in the Dag Chitha shall be written.

12. In the instant case. Column 3 of Ext. A/5 and Column 3 of Ext. A/6 contained the name of some of the plaintiffs. These documents do not contain the names of the defendants. Record-of-rights like Dag Chitha and Jamabandi have presumptive value as to possession of persons whose names have been recorded. A perusal of the judgment of the first Appellate Court shows that it has considered the oral evidence only of the witnesses examined by the parties; but it has not considered any of the documents relied on by the parties, before it came to the finding on possession. Shri Charugopal Singh, learned counsel for the respondents, submits that as Ext. A/5 and Exhibit A/6 are draft Dag Chitha and Jamabandi and not yet finalised and as such they do not prove possession of the plaintiffs whose names have been recorded. We refrain from expressing any opinion on the value of these documents. It is the duty of a Court of facts to consider all relevant evidence both oral and documentary, before it comes to a finding on any question of fact or law. In the instant case, in our opinion, the finding on the fact of possession by the first Appellate Court has been vitiated by the non-consideration of material documentary evidence on record, and the consequent finding in this regard of the learned Single Judge has also been vitiated. We, therefore, set aside the judgment and decree of the learned Single Judge in S. A. No. 29 of 1970 as well the judgment and decree of the learned Additional District Judge, Manipur, in Civil Appeal No. 60/68/2/69 and remand the case to the Additional District Judge, Manipur, to dispose of the matter in accordance with law after consideration of all the evidence on record - oral and documentary. The appeal is allowed. Costs of this appeal will abide by the result.

D. Patahak, J.

I agree.

L.P. Appeal allowed.