

(1990) 08 GAU CK 0004
In the Gauhati High Court
Case No : Second Appeal No. 14 of 1983

Haridhar Upadhaya

APPELLANT

Vs

Jitendra Lal Roy and Ors.

RESPONDENT

Date of Decision : 23-08-1990

Acts Referred:

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 50, 50(b), 50(b), 8, 8

Citation : (1990) 2 GLJ 266

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

Bench : Single Bench

Advocate : K.K.Dey, B.Banerjee, B.K.Das, Advocates appearing for Parties

Judgement

1. Having lost in both the Courts below defendant has filed the present second appeal.
2. The case of the plaintiff is that he purchased occupancy right i.e. jote right in respect of 3 Bighas 16 Kathas of land from one Shiv Kumar @ Ram Kumar by a registered deed dated 6.2.73 and got possession. Subsequently principal defendant No.1 dispossessed him from 1 Bigha of land described in Schedule III to the plaint. In the first Schedule, the entire land has been described and in the second Schedule, the land in possession of the plaintiff has been described. According to defendant he purchased the entire first Schedule land from proforma defendant No.2 by a registered sale deed on 96.72. i.e. prior to the date of purchase by the plaintiff and since then he has been in possession of the land. The allegation of dispossession has been denied by the defendant.
3. The learned trial Court framed as many as 7 issues and decreed the suit which was affirmed by the learned lower appellate Court.
4. I have heard Mr. B.K.Das, learned counsel for the appellant and Mr.K.K.Dey, learned counsel for the respondent.
5. Before this Court Mr. Das has urged 3 points viz (i) the purchase by the

plaintiff of the land is void abinitio as it was violative of section 8 of the Assam (Temporarily Settled Areas) Tenancy Act, 19 1, for short the Act, inasmuch as, prior permission of the Government was not obtained and n o notice of transfer was served on the landlord ; (ii) the decree is bad in law, inasmuch as, the landlord who was a necessity party was not impleaded and (iii) the sale deed in favour of the defendant Ext. 1, was prior to the purchase of the land by the plaintiff by the deed Ext. I. Mr. Das has further urged that suit is also hit by section 31 of the Specific Relief Act, 1963 as there is no prayer for cancellation of the sale deed, Ext. A.

6. On the other hand, Mr. Dey, learned counsel for the respondent has urged that this is for the first time, that legal plea No. I, as stated above, has been taken before this Court. Regarding impleading the landlord as a party, the learned counsel has urged that he is not a necessary party, as no relief has been claimed against him and that apart, the revenue record viz Khatian, Ext.3 clearly proves that the plaintiff is a tenant in respect of the suit land. Learned counsel has further urged that as both the Courts below did not accept the sale deed, Ext. A, after considering the evidence on record and also taking into consideration the expert's evidence, the submission of Mr. Das that suit is hit by section 31 of the Specific Relief Act is not tenable.

7. As the consequence of noncompliance of section 8 of the Act has been laid down in section 50 of the Act, both the sections have to be read together. I quote below the said sections 8 and 50:

"8. Right of transfer. An occupancy tenant shall have a right of transfer in respect of his holding with the prior permission of the Government in the manner prscribed. A notice of such transfer shall be served on the landlord in the manner prescribed.

Provided that an occupancy tenant shall not transfer his land to a nonagriculturist."

"50. Forfeiture of tenancy on subletting and transfer. If a tenant sublets or transfer the whole or any part of his holding otherwise than in accordance with the provision of this Act, then the tenant's interest thereon shall be forfeited; and

(a) if the transferee is an agriculturist, he shall be deemed to have become a tenant under the landlord under the same terms and conditions as the transferor;

(b) if the transferee is a nonagriculturist then such transfer shall be void and the Deputy Commissioner may, after such enquiry as may be prescribed, and after ejecting any person in possession, place any landless agriculturist as a nonoccupancy tenant of the landlord."

Reading section 50 alongwith section 8, the intention of the legislature is clear. If a tenant sublets or transfer the whole or any part of his holding otherwise then in accordance with provisions of the Act, which will also includes section 8, then tenant's interest thereon shall be forfeited and if the transferee is an

agriculturist he shall be deemed to be a tenant under the landlord under the same terms and conditions as that of the transferor. So, in the case in hand by the sale deed, Ext. I, which has been accepted by both the Courts below as a genuine transaction, the plaintiff has purchased tenancy right, he shall be deemed to be a tenant under the same terms and conditions under the landlord, though the seller, who was also a tenant, forfeited his right. The intention of the legislature is not to deprive the transferee if he is an agriculturist, the occupancy right acquired by such transferee, provided he is an agriculturist.

8. Mr. Das has drawn my attention to the cause title of the plaint, which is in Bengalee, wherein the plaintiff has been described as a householder and relying on this, Mr. Das has urged that the plaintiff was not an agriculturist, but was a money lender. But this contention has no force, as in para 4 of the plaint it has been clearly stated that the plaintiff was an agriculturist.

9. Clause (b) of section 50, inter alia, provides that if the transferee is a nonagriculturist then such transfer shall be void and the Deputy Commissioner may after such enquiry as may be prescribed and after ejecting any person that may be in possession place any person in possession as a nonoccupancy tenant of the landlord. Contention of Mr. Das that plaintiff was a money lender was not an issue and from judgments of the Courts below I do not find that this point was pressed. If he was a nonagriculturist it is for the Deputy Commissioner to take action under clause (b) of section 50 of the Act. This takes care of the submission of learned counsel for the appellant regarding absence of prior permission of the Government

10. Coming to notice to the landlord, reading section 8 it is clear that a notice of such transfer has to be served on the landlord. The right of the landlord in respect of nonoccupancy tenant is limited and is governed by section 51 (1) of the Act. This section provides that a nonoccupancy tenant shall not be ejected by his landlord except in execution of a decree for ejectment passed on only one ground i.e. the tenant used the land comprised in his holding in a manner which rendered it unfit for the purpose of tenancy. Even if notice was not served it will not take away right of the landlord to eject the tenant under section 51 of the Act.

11. Mr. Das has urged, relying on the decision of the Supreme Court in *Bal Niketan Nursery School vs. Kesari Prasad*, AIR 1987 SC 1970, that the landlord is a necessary party and in view of section 99 read with Order I Rule 9 CPC, the suit may be dismissed for nonjoinder of necessary parties. The leading case on the subject is *Udit Narayan Singh vs. Additional Member, Board of Revenue, Bihar & another*, AIR 1963 SC 786, wherein it was held that a necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final "decision on the question involved in the proceeding. This ratio was also followed in the decision cited by Mr. Das viz *Bal Niketan Nursery School* (Supra). A Division Bench of this Court also examined this

question in Dilip Kumar Dutta vs. State, 1986 (1) GLU 367 and relying on the decision of the Apex Court, inter alia, held that a necessary party is one without whom no order can be made effectively.

12. Coming to the case in hand even though landlord was not made a party, the suit could be decided, firstly on the ground that no relief was claimed against the landlord and secondly, the prayer was only for ejectment of the defendant for dispossession of the plaintiff illegally. On the top of that, the right of the landlord conferred under section 51 of the Act will not be affected, even if the present suit is decreed. Situated thus, I held that the second contention of Mr. Das, that the landlord is a necessary party has no force.

13. Referring to the sale deed Ext. A, it has been urged by Mr. Dey that both the Courts below have clearly held that Ext. A was a fake document and learned lower appellate Court went to the extent of holding that it was executed by an imposter. I may also mention here the decision of the Apex Court on which reliance has been placed by Mr. Dey viz Jaspal Singh vs. State of Punjab, AIR 1979 SC 1708, wherein it was held in connection with thumb impression that it is an exact science and does not admit any mistake or doubt. This has been submitted as in ext. thumb impression was given.

14. As both the Courts below have held that Ext. n was not executed by the rightful owner, the question of seeking consequential relief as urged by Mr. Das, under section 31 of the Specific Relief Act, 1963 cannot arise.

15. I have already stated regarding the submission of Mr. Das that the plaintiff was a moneylender and after considering the materials on record, I have rejected the submission. I may only state here that the learned lower appellate Court clearly held that defendant is a school teacher and does not cultivate any land. This finding of fact is binding on this Court.

16. For want has been stated above, I hold that the present appeal has no merit and accordingly it is dismissed. No costs.