

(1992) 08 GAU CK 0011

In the Gauhati High Court

Case No : Second Appeal No. 14 of 1980

Jadu Gopal Debnath

APPELLANT

Vs

Kaminikumar Mali

RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:

Tripura Land Revenue and Land Reforms Act, 1960 — Section 133(d), 133(d), 133A, 133A, 134

Citation : (1993) 1 GLJ 246

Hon'ble Judges : N.G.Das, J

Bench : Single Bench

Advocate : P.M.Palit, A.K Bhowmik, Advocates appearing for Parties

Judgement

1. This appeal is directed against the judgment and decree of learned Additional District Judge, Tripura dated 11.1.1980 which reversed the judgment and decree of the Court of Subordinate Judge, South Tripura, dated 21.5.1977.

2. The appeal arises out of the suit brought by the appellant for declaration of title and recovery of possession of land measuring 1.41 acres (hereinafter referred to as the suit land) covered by CS Plot Nos. 1630 and 1640 of Khatian No. 1029 in Mouja Brajendra Nagar, PS Sabroom.

3. The case of the plaintiff is that one Brajendra Kishore Deb Barma was the original owner and possessor of land measuring 10.21 acres under Khatian No. 1029 situated at Mauza Brajendra Nagar in Taluki right and after enforcement of the Tripura Land Revenue and Land Reforms Act, 1960 (hereinafter referred to as the Act) which abolished the intermediary right the said Brajendra Kishore Deb Barma, Talukdar acquired jote right over the aforesaid land under the provision of section 136 (2) of the Act and while he was thus exercising his jote right over the aforesaid land he after obtaining necessary permission as required under section 187 of the Act sold the aforesaid land measuring 10.21 acres of Khatian No. 1029 to the plaintiff by a registered deed of sale dated 4.4.1970 which was executed by one Purnandu Kishore Deb Barma, the constituted attorney of

Brajendra Kishore Deb Barma.

4. But although the plaintiff became the rightful owner of the aforesaid land by dint of the registered Kabala bearing No. 14790 dated 4.4.1970 the defendant (respondent herein) did not vacate the suit land which he had been possessing as an unauthorised occupier at the time of purchase of the land by the plaintiff.

5. The further case of the plaintiff is that the defendant filed an objection under section 43(1) of the Act before the Assistant Survey Settlement Officer, Sabroom against the entries in Khatian No. 1029, but that objection case was dropped on 20.6.1967. Thereafter on 29.5.1970 the respondent filed a suit, viz. Title Suit No. 115 of 1970 in the Court of Munsiff, Sabroom for declaration of his title to the suit land and permanent injunction against the appellant. But in that case although the respondent got a decree for perpetual injunction his claim to title over the suit land was rejected.

6. The appellant asked the respondent to vacate the suit land on a number of occasions but he declined to do so. The immediate cause of action arose on 26.4.1972 when the respondent declined to deliver possession of the suit land in favour of the respondent.

7. The defendant resisted the suit by filing a written statement. He denied all the material averments of the plaint and contended further that he got settlement over the land in suit from the Talukdar Brajendra Kishore Deb Barma as a Chakran tenant ie in lieu of service rendered as a labourer and he had been possessing the land in suit for more than 50 years in his such capacity as Chakrantenant. He averred that after abolition of the Taluki right by operation or the Tripura Land Revenue and Land Reforms Act Brajendra Kishore Deb Barma, the Talukdar never acquired any jote right over the suit land and he was also not entitled to retain possession over the suit land as it was never under his personal cultivation or occupation. It has, therefore, been contended that Khatian No. 1029 is a false collusive document.

8. It was further contended by him that he filed an objection case under section 43 (1) of the Act in respect of the recording of Dag Nos. 1630 and 1640 in Khatian No. 1029. But that objection case was dropped as Khatian No. 1029 was not placed under draft publication and it was also not attested. It was however admitted by the defendant that he instituted Title Suit No. 115 of 1970 in the Court of learned Munsiff, Sabroom for declaration of his title and perpetual injunction restraining the plaintiff from entering into the suit land and in that suit his prayer for declaration of title was rejected But he got decree for perpetual injunction restraining the appellant from entering into the suit land. It was further averred by the defendant that the sale deed by dint of which the plaintiff claimed title to the suit land was a sham transaction as Talukdar Brajendra Kishore Deb Barma lost his intermediary right over the land in suit after the Tripura Land Revenue and Land Reforms Act came into operation. It was also contended that the suit was not maintainable as it was barred by resjudicata as a result of the

former suit. Hence, according to him the suit is liable to be dismissed.

9. Upon the pleadings the learned SubJudge at first framed six issues, namely :

1. Has the plaintiff any cause of action for the present suit ?
2. Is the suit barred by resjudicata ?
3. Whether the defendant was a Chakran tenant under the Talukdar and whether he acquired any light and was in possession of the suit land at the time of the vesting of the Taluki right with the Government ?
4. Has the plaintiff his alleged right, title and interest over the suit land ?
5. Is the defendant ejectable from the suit land ? and
6. To what relief, if any, is the plaintiff entitled ?

10. The findings of the learned Sub Judge on all these issues were in favour of the appellant. So, aggrieved by that decree the defendant preferred an appeal. After hearing the appeal the learned Additional District Judge remanded the suit fo the trial Court after framing an additional issue, namely, "Whether the Talukdar could retain the suit land in terms of section 136 of the Tripura Land Revenue and Land Reforms Act, 1960" and directed the trial Court to determine the issue as framed and return the evidence with his finding as required under Order 41 Rule 25 CPC.

11. Pursuant to that direction the learned SubJudge allowed the parties to adduce further evidence in"respect of the aforesaid issue. But after recording evidence and hearing the parties learned SubJudge decided the aforesaid issue in favour of the plaintiff holding that the Talukdar can retain the suit properties in accordance with the provision of section 136 of the Act. The learned Additional, District Judge thereafter heard the appeal afresh and dismissed the suit and thus allowed the appeal with costs. Hence, this second appeal.

12. Now the crucial point that calls for consideration is whether the Talukdar Brajendra IfLishore Deb Barma retained the suit land under the jote right with effect from the date of vesting which is admittedly 14.11.1963. Admittedly, Brajendra Kishore Deb Barma was holding the suit land alongwith other lands as an intermediary and be was never in physical possession of the suit land. The expression "intermediary" has been defined in section 133 (c) of the Act to mean a person who holds in an estate the rjght, title or interest of a Talukdar and includes (i) a person holds land either revenuefree or at a concessional rate, and (ii) a tenure holder. In the instant case there is no controversy over the fact that Brajendra Kishore Deb Barma was the Talukdar in respect of the land in dispute. It is also an admitted fact that the defendant was in physical possession of the land in suit for a pretty long time since before the date of vesting.

13. The contention of Mr.AK Bhowmik, the learned counsel for the appellant is that Brajendra .Kishore Deb Barma retained the suit land as a part, of his jote

land after the date of vesting and as such he was the jotedar having right to dispose of the suit land. But Mr. PM Palit, the learned counsel appearing, for the respondent; .has quite fervently argued that there in no iota of evidence, on record to show that Brajendra Kishore Deb Barma retained the land, in suit as jotedar after the date of vesting. Mr. Palit has drawn my attention to the provision laid down under section 134 of the Act and has submitted further that as per the provision of this section 134 of the Act the Talukdar lost all of his right, title and interest over the land which he hold jn taluki right after the date of vesting. Section 134 of the Act reads:

As soon as maybe after the commencement of this Act, the State Government may, by notification in the Official Gazette, declare that, with effect from the date specified in the notification (hereinafter referred to as the vesting date), all estates situated in any area or areas and all rights, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrances."

The next section namely, 135 which is also relevant for the purpose reads :""135. Notwithstanding anything contained in any law for the time being in force or in any agreement or contract, express or implied, with effect from the vesting date,

(a) each estate to which the notification relates and all rights, title and interest of intermediaries in such estate shall vest in the Government free from all encumbrances ...

(b) all grants and confirmation of title to the estate and rights therein made in favour of an intermediary shall cease and determine;" Clause (f) of section 135 is to the effect that all rents and other dues in respect of the estate for any period after the vesting date which, but for the Act would be payable to the Government and any payment made in contravention of this clause shall not be valid discharge by the person liable to pay the same. Clause (g) of the said section provides that :

"(g) Where under any agreement or contract made before the vesting date, : any rent, cess, local rate or other dues for any period after the said date has been paid to or compounded or released by on intermediary, the same shall, notwithstanding such agreement or contract, be recoverable by the Government from the intermediary, and may, without prejudice to any other mode of recovery, be realised by deduction from the compensation payable to the intermediary."

14. In this context, the other relevant provisions of the Act are sections 140 and 141 of Chapter 12 of Act. Section 140 states that:

"Every intermediary, whose right, title and interest in any estate vest in the Government under Chapter XI shall be entitled to receive and be paid therefor compensation as hereinafter provided."

Section 141 of the Act envisages that "the compensation referred to in section 140 shall be due as from the vesting date and the portion remaining unpaid shall carry interest at the rate of 1\ percent per anum."

15. A combined reading of all the aforesaid sections leave no room for doubt that with effect from the date of vesting the intermediary ceases to have any claim to the estate held by him and that with effect from that date all rights in respect of the estate are enforceable only by the Government to the entire exclusion of the earst while intermediary. The provision reproduced above make it abundantly clear that intermediary is left with no right of any variety in the estate from the vesting date save the right to compensation due to him from the Government. Section 141 of the Act makes it clear that the intermediary will be entitled to get interest at the rate of 2y percent per annum. The underlying aim of these provisions is very clear that intermediary will cease all rights whatsoever in respect of the land he held as an with effect from the date of vesting.

16. Mr. Bhowmik, the learned counsel for the appellant has, however, argued that the Khatian marked, as Ext. 5 indicates that Brajendra Kishore Deb Barma retained the suit land after the date of vesting. In support of his contention Mr. Bhowmik placed reliance on the provision of section 136(1) of the Act. It is true that section 136(1) of the Act envisages that notwithstanding anything contained in sections 134 and 135, an intermediary shall, subject to the provisions of subsection (2), be entitled to retain with effect from the vesting date homestead, building etc. Clause (b) of section 136 (1) of the Act states that he will also be entitled to retain with effect from the vesting date lands under his personal cultivation.

17. But in the instant case, it is an admitted fact that defendant has been possessing the land in suit for over 35 years and it is the case of the defendant that he get this land from Brajendra Kishore Deb Barma as Chakran tenant i.e. in lieu of his service rendered to him as a labourer/servant. But Mr. Bhowmik has quite straneously arged that section 133 (d) which defined tenant does not even whisper that "tenant" means "Chakran tenant". According to him such a term is quite unknown to the provisions contained in the Act. According to him no one can claim to be a tenant unless he pays rent either in case or in kind and delivering a share of produce. But Mr. Palit, the learned counsel has submitted that a closer examination of the definition given under clause (d) of section 133 will show that a person may became tenant if he pays rent in kind also. Section 133 (d) defines the term "tenant" to mean a person who cultivates or holds the land of an intermediary under an agreement, express or implied, on condition of paying therefore rent in cash or in kind or delivering a share of the produce and includes a person who cultivates or holds land of an intermediary under the system generally known as "bhag"; "adhi" or "barga"; and the term "sub tenant" shall be construed accordingly. The contenton of Mr. Bhowmik is that to be a tenant a person must pay the rent in cash or he must deliver a share of the produce of the land. But no person can claim to be a tenant in lieu of his service

rendered as a labourer/servant. But in view of the expression contained in clause (d) that a tenant means a person who cultivates the land on condition of paying rent in kind, I am, on independent consideration of clause (d) of section 133 of the Act of the view that a person can very well come within the expression "tenant" if he pays the rent in kind ie by rendering his service as a labourer or servant of the intermediary.

18. In this context it has also been reiterated by Mr. Bhowmik that Khatian Ext. 5 is a clear proof that Brajendra Kishore Deb Barma held the land in suit in jote right after the date of vesting and according to him the burden lies on the defendant to show that this entry in the record of rights namely Ext. 5 was wrong. Mr. Bhowmik has referred to the provision contained in section 43 (3) of the Act which states that every entry in the record of rights as finally published shall, until the contrary is proved be presumed to be correct. But to repel the contention of Mr. Bhowmik, Mr. Palit the learned counsel appearing for the respondent has argued that this presumption is rebuttable and cannot be regarded to be conclusive proof in respect of the title of the land. According to him order of Revenue Officer in mutation "proceeding has no evidentiary value in civil suit. In support of his" contention Mr. Palit has placed reliance on the decision of the case of Dbyaram & others vs. Dawalatshah & another, reported in AIR 1971 SC 681. In f Mi case their Lordships under para 21 of the judgment observed that the decision of the Naib Tahsildar in a mutation proceedings even as a piece 01 evidence has little evidentiary value when it is founded on a material piece of evidence which was untrue.

19 The next case referred to by Mr. Palit in this connection is the case of Thakur Nirman Singh & others vs. Thakur Lal Rudra Partab Narain Singh & others reported in AIR 1926 PC 100. In this case their Lordships held "It "is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which title to and the proprietary rights in immovable property are determined. They are nothing of the kind, as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be pat into occupation of it with greater confidence that the revenue for it will be paid."

20. It is the case of the defendant that he submitted objection against the entries of this Ext. 5. But his objection case was dropped as Ext. 5 Khatian was not placed on the draft publication as required under section 43 (1) of the Act. It has already been stated above that the record of rights as finally published has a presumptive value until contrary is proved. It means the correctness of such entry is a rebuttable one. It would be apparent from Khatian Ext. C and evidence of PWs and DWs that defendant has bSeii possessing the land in suit for over 35 years as tenant in lieu of service and that Talukdar Brajendra Kishore Deb Barma was never in physical possession of the land for any length of time during this

long tenure of 35 years. There is no iota of evidence on record to show that either before or after the date of vesting Brajendra Kishore took any step to retain the suit land under jote right. I am, therefore, unable to agree with the submission of Mr. Bhowmik that this Ext. 5 created jote right to Brajendra Kishore Deb Barma. In view of evidence on record I am constrained to hold that entries made in Ext. 5 Khatian are wrong.

21. The next point urged by Mr. Bhowmik is that the defendant failed to establish his title in the suit viz. TS No. 115 of 1970 and hence, it must be inferred that Brajendra Kishore Deb Barma held the land in suit in jote right after the date of vesting. But Mr. Palit has repelled the contention of Mr. Bhowmik by submitting that the present plaintiff was not aggrieved by the decision of Title Suit No. 115 of 1970 although it was filed against him. The further submission of Mr. Palit in this context is that even though the trial Court refused to declare the title of the suit land in favour of the defendant that cannot improve the case of the appellant in view of the overwhelming evidence on record and the admitted fact that the defendant is in physical possession of the land in suit for over 35 years. According to him to get a declaration of title a stricter proof is necessary. But failure to prove title does not stand in the way of granting relief of permanent injunction. In support of his contention Mr. Palit the learned counsel for the respondent has referred to the case of Ramswarup Tripathi vs. City Administrator, Gwalior, Office of Municipal Corporation, reported in AIR 1988 MP 264. In this case his Lordship Dr. TN Singh delivering the judgment of Madhya Pradesh High Court held under para 10 that:

"It may be that for declaration of title, stricter proof was necessary and proper measurement of the land of which title was derived under the sale deed should have been proved. But, in any view of the matter, the relief of permanent injunction could not have been refused on the basis of evidence and indeed their own findings that possession of the Chabutara by the plaintiff, for 7/8 years was duly established and proved."

22. I have already held that defendant was in physical possession of the land in suit for over 35 years and entries made in Ext. 5 were not correct and in view of these facts I am not satisfied that the contention pressed in this context has any merit.

23. In view of my findings recorded above, I find no merit in this appeal which is accordingly dismissed. The judgment and decree passed by the appellate Court is affirmed. But under the circumstances, I leave the parties to bear their own costs in all the three Courts and order accordingly.

24. The appeal is dismissed.