
(1986) 02 CAL CK 0030
In the Calcutta High Court
Case No : A.F.A.D. No's. 1491-1492 of 1962

Jatiram Gharami and Others

APPELLANT

Vs

Atul Krishna Das Kuri and Others

RESPONDENT

Date of Decision : 19-02-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 94, 100, 101
Evidence Act, 1872 — Section 101, 102, 103, 104, 114

Citation : AIR 1988 Cal 79

Hon'ble Judges : Sankar Bhattacharyya, J

Bench : Single Bench

Advocate : Mukti Prasanna Mukherji, for the Appellant; Bankim Dutta and Anilananda Mukherji, for the Respondent

Judgement

Sankar Bhattacharyya, J.—These two appeals by the unsuccessful defendants are directed against the appellate judgment and decree of the learned Additional District Judge, 3rd Special Court, Alipore, passed in Title Appeal No. 1093 and Money Appeal No. 98 of 1960, reversing the judgment and decree of the learned Munsif, 1st Court, Baruipur, passed in Title Suit No. 902 and Money Suit No. 138 of 1957 which were tried analogously as the parties were the same and common questions of law and fact were involved. For the same reason, the two appeals were heard analogously by the learned Additional District Judge and were disposed of by a common judgment. Accordingly, these two appeals have been heard together and this judgment will govern both.

2. The property involved in Title Suit No. 902 of 1957 comprises five plots of land appertaining to Khatian No. 214, measuring 45 decimals in area. The case of the plaintiffs was that this land, together with certain other lands of Khatian Nos. 21 and 150, were held under them as under-raiyats by Rakhal Das. Fulmani Dasi and Jadunath Gharami at a rental of Rs. 23-5as-6 P. per annum. The plaintiffs instituted a rent suit against them, being Rent Suit No. 2232 of 1931, for recovery of arrears of rent. During the pendency of the suit Rakhal Das died and

was substituted by his heirs, defendants Nos. 3 and 4 of the suit. A rent decree was passed in that suit against Fulmani Dasi and Jadunath Gharami. the surviving tenants and defendants 3 and 4 and in Rent Execution Case No. 2966 of 1934 plaintiffs purchased the defaulting holding in Court sale. The sale was confirmed on 20-5-35 and the sale certificate was granted to the plaintiffs on 6-8-35 after the sale became absolute. In execution of the sale certificate, plaintiffs took symbolical possession of the defaulting holding through Court. They then went into khas possession and remained in joint possession of the lands appertaining to the holding till there was a partition between them. Later on. Fulmani and Jadunath also died leaving the remaining defendants as their heirs.

3. In the revisional settlement records of rights all the lands of the holding have been duly recorded in the names of the plaintiffs as their khas lands except the suit lands which have been wrongly recorded in the names of the original tenants Rakhal Das. Fulmani Dasi and Jadunath Gharami all of whom died before the settlement operation started. Taking advantage of the erroneous entries in the record of rights the defendants were trying to dispossess them from the suit lands, compelling them to bring the instant suit for declaration of their title to the suit lands, confirmation of their possession and for perpetual injunction.

4. The defence of the defendants was that they are not aware of any auction sale and even if there was any such sale, it was never acted upon as the plaintiffs continued to accept rents from them and grant receipts. That apart, plaintiffs' interest as raiyats having vested in the State, they had no more any subsisting title to the suit property. An alternative case of acquisition of title by adverse possession was also pleaded by the defendants.

5. The property in dispute in Money Suit No. 138 of 1957 consists of three plots of land, namely plots Nos. 714, 715 and 716 of Khatian No. 150. These plots have been duly recorded in the revisional settlement record of rights in the names of the plaintiffs and they have been possessing the same by paying rent to the Government. On Aswin 18. 1364 B.S. defendants misappropriated some fruits from the trees standing on those lands, causing loss to the plaintiffs to the tune of Rs. 99/- to recover which they had to institute the suit.

6. Defendants contested the suit claiming to be tenants of the above plots and contending, inter alia, that the plots have been wrongly recorded in the names of the plaintiffs. They also denied misappropriation of fruits as alleged by the plaintiffs.

7. The learned Munsif dismissed the title suit on the ground that the plaintiffs failed to prove their title and possession in respect of the suit lands. In the money suit although the learned Munsif found that the plaintiffs had proved both their title and possession in respect of the suit lands, the suit was dismissed on the ground that the alleged misappropriation of fruits had not been established.

8. On appeal by the plaintiffs, the lower appellate Court held that the suit being for

declaration of title and confirmation of possession and the plaintiffs having established the original tenancy was continuing (sic) which they failed to prove their alternative case of adverse possession. In view of the above, the lower appellate Court decreed the title suit, reversing the judgment and decree of the learned Munsif.

9. In the money appeal the lower appellate Court upheld the finding of the learned Munsif that the plaintiffs had both title and possession in respect of the suit lands but differed from its finding that the alleged misappropriation of fruits had not been proved. Accordingly, the lower appellate Court decreed the suit in part for a sum of Rs. 25A with interest @ 6% per annum till realisation of the amount.

10. Mr. Mukherjee, the learned advocate for the defendants-appellants, strenuously contends that the lower appellate Court was wholly wrong in misplacing the onus upon the defendant. According to him, since the plaintiffs instituted the suit for declaration of title and confirmation of possession, the onus lay upon them to prove their title as well as possession which they claimed to have obtained through Court in execution of the sale certificate. Mr. Mukherjee contends further that the lower appellate Court was not justified in upsetting the finding of the learned Munsif that the evidence regarding plaintiffs' possession was highly discrepant and unworthy of credit. In short, Mr. Mukherjee's contention is that since the plaintiffs hopelessly failed to prove their case, the lower appellate Court should have affirmed the decision of the learned Munsif instead of reversing it.

11. There is no dispute that the holding in question was sold in execution of a rent decree obtained by the plaintiffs against the original tenants Fulmani and the heirs of the deceased tenants Rakhal Das and Jadunath Gharami. There is also no dispute that the plaintiffs purchased the holding in Court sale and got sale certificate. Exhibit-1 is the sale certificate in question. Apart from the sale certificate the plaintiff-respondent have also produced the certified copy of the rent decree in this Court. The lower appellate Court has observed that though a sale certificate does not create title, it nevertheless is a strong evidence of title. In the case of AIR 1922 253 (Privy Council) , their Lordships clearly laid down in no uncertain terms that Certificates of sale are documents of title which ought not to be lightly regarded or loosely construed.

12. Mr. Mukherjee has pointed out certain discrepancies in the sale certificate. That are--

i) one Harimati Dasi has been shown as one of the judgment-debtors but she was never a tenant of the defaulting holding; and

ii) the number of the Rent suit has been mentioned as 1231/31 instead of 2231/31;

13. In my opinion, the number of the suit as given in the sale certificate is evidently wrong because there is no discrepancy regarding the number of the

rent execution case. It is true that there is no evidence to indicate that Harimati Dasi was a tenant of the defaulting holding but the mention of her name in the sale certificate as one of the judgment-debtors appears to me to be quite inconsequential as the names of the recorded tenants appear in the sale certificate.

14. On the question of onus, I am inclined to hold that the view taken by the lower appellate Court was correct. Plaintiffs brought the suit on the basis of title which they fully established. They never alleged dispossession by the defendants. Their case was that they were in possession since their purchase of the holding in the Court sale and they prayed for a decree for confirmation of their possession which was being threatened by the defendants. Title of the defendants' predecessors as under-raiyats was extinguished by the Court sale and the only way in which the defendants could defeat the plaintiffs' claim was to prove acquisition of independent title by adverse possession to the knowledge of the plaintiff-landlords.

15. The lower appellate Court considered the discrepancies in the evidence of the plaintiffs' witness which were unduly magnified by the learned Munsif and rightly observed that the discrepancies could be safely ignored as evidence was being given by the witnesses long after the Court sale. The lower appellate Court also discussed the evidence adduced by the defendants and found that the evidence was absolutely unreliable. The lower appellate Court pointed out that though the defendants claimed to continue in possession notwithstanding the Court sale by payment of rents to the plaintiffs, not a scrap of paper was produced by them in support of their claim. In short the lower appellate Court, on an appraisal of the evidence on record, arrived at the finding that the plaintiffs and not the defendants were in possession of the suit lands and this being a finding of fact cannot be disturbed in second appeal unless, of course, it is shown that the finding is based on a misconception of the evidence or overlooking of material evidence. It may be mentioned in this context, that if the defendants were possessing the lands as tenants under the plaintiffs it is riot understandable how they could acquire independent title as owners by adverse possession.

16. Assuming that the onus of proving possession was upon the plaintiffs, even then the question of onus lost most of its importance as both parties adduced evidence in support of their respective cases. The defendants strongly relied upon the revisional settlement record of rights (Ext. 4(f)) in which the suit lands have been recorded in the names of their predecessors Rakhal Das, Fulmani Dasi and Jadunath Gharami, According to the plaintiffs the entries are erroneous and ex facie they are so because, these three persons admittedly died long before the settlement operation. That being the position, the entries completely lose their presumptive force.

17. It may be mentioned that the lands involved in the money suit which also were included in the sale certificate have been recorded in the names of the plaintiffs. Though defendants challenged the entries as erroneous they failed to

prove it. The lower appellate Court pointed out and, in my opinion rightly, that when the plaintiffs took possession of all other lands of the defaulting holding and were still in possession thereof, there could be no reason why they would not take possession of the five plots involved in the title suit.

18. The next branch of Mr. Mukherjee's argument that the title suit was governed by Article 120 of the old Limitation Act does not improve the defendants' case because under Article 120 the suit is to be brought within six years from the date when the right to sue accrues. The suit, as appears from the plaint, was brought well within the period of six years from the date when the cause of action arose that is, when defendants threatened to dispossess the plaintiffs from the suit lands on the strength of the erroneous entries in the record of rights (Ext. 4(b)) which was published at or about the same time. In the above circumstance, I find no reason to interfere with the judgment and decree of the lower appellate Court passed in Title Appeal No. 1093 of 1960 and accordingly S.A. No. 1491 of 1962 must be dismissed.

19. So far as Money Appeal No. 98 of 1960 is concerned, Mr. Mukherjee has not advanced any separate argument assailing the judgment and decree of the lower appellate Court. Both the Courts below concurrently held that the plaintiffs were owners in possession of the lands involved in the suit and the lower appellate Court further held that the defendants misappropriated fruits from the trees standing on those lands. Plaintiffs' possession received support from the finally published record of rights. Nothing has been pointed out by Mr. Mukherjee to show that the finding of the lower appellate Court is based on any misconception of the evidence. In the above circumstance, the judgment and the decree of the lower appellate Court must be affirmed.

20. For the foregoing reasons, both the appeals namely, S.A. Nos. 1491 and 1492 of 1962 are dismissed and the judgment and decree of the lower appellate Court passed in Title Appeal No. 1093 and Money Appeal No. 98 of 1960 are affirmed. The appellants will pay cost of the appeals to the respondents.