
(1990) 07 GAU CK 0014

In the Gauhati High Court

Case No : Second Appeal No. 56 of 1982

Jitendra Kumar Chakravarty

APPELLANT

Vs

Shanti Das and Ors.

RESPONDENT

Date of Decision : 10-07-1990

Acts Referred:

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 3(3), 3(3)

Citation : (1990) 2 GLJ 172 : (1991) 1 GLR 19

Hon'ble Judges : B.P.Saraf, J

Bench : Single Bench

Advocate : S.R.Bhattacharjee, R.Gogoi, J.P.Bhattacharjee, B.K.Ghose, Advocates appearing for Parties

Judgement

This second appeal is by the plaintiff whose suit for declaration of jote right over the land described in the second schedule to the plaint was dismissed by both the Courts below.

The case of the plaintiff was that the defendant No. 2, was an occupancy tenant in respect of the suit land which belonged to one Maulabi Matin Uddin Ahmed Choudhury. The said land was transferred to the plaintiff by the said occupancy tenant by a registered sale deed dated 25.1.74. As, sometime in the year 1975, the plaintiff was dispossessed by the defendant No. 1, the suit was filed by him for declaration of his jote right etc. The claim of the plaintiff was resisted by defendant No. 1. The learned trial Court accepted the contention of the plaintiff that defendant No. 2 was the occupancy tenant in respect of the suit land and that the suit land had been transferred to the plaintiff by a registered sale deed. It however, found that the plaintiff was not an "agriculturist" and, as such, the transfer in question was void in view of the proviso to section 8 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (Assam Act XX [11 of 1971]) hereinafter referred to as "the Act", which prohibits an occupancy tenant from transferring his land to a nonagriculturist, in view of this finding it was held that the transfer in question to the plaintiff was void by virtue of the provisions 01

clause (b) of section 50 of the Act. The suit was, accordingly, dismissed. An appeal was preferred before the Assistant District Judge, Karimganj. The appellate Court remanded the case to the trial Court with a direction to decide on merit afresh the following additional issue "Whether the plaintiff was an agriculturist under the Assam (Temporarily Settled Areas) Tenancy Act, 1971". The trial Court took fresh evidence and examined the plaintiff and one Shri Jogesh Chandra Das who was P. W. 4. The plaintiff in his deposition stated that he was cultivating the suit land personally. It was admitted by the plaintiff that he was a Brahmin by caste. He, however, denied the suggestion that Brahmins do not cultivate land by plugging themselves. He also denied that he did not cultivate the land. The plaintiff, however, admitted that he was a priest and was running some grocery shop in the village. P. W. 4, Jogesh Chandra Das, stated that the plaintiff caused the suit land to be ploughed by others. The learned trial Court, on consideration of the aforesaid evidence, arrived at a finding that the land was not ploughed by the plaintiff personally but through others. In view of this finding, the learned trial Court held that the plaintiff was not an agriculturist within the meaning of clause (3) of section 3 of the Act. Accordingly, the sale of the suit land to the plaintiff by the occupancy tenant was held to be void under section 50 (b) read with section 8 of the Act. The suit was, therefore, dismissed; An appeal was again filed before the Assistant District Judge who affirmed the decision of the trial Court and dismissed the appeal. Aggrieved by the judgment of both the Courts below, the plaintiff has filed this second appeal.

Mr. R. Gogoi, the learned counsel for the appellant, submits that the learned Courts below misconstrued and misinterpreted the provision of section 3 (3) of the Act and erroneously held that in order to be an "agriculturist" a person must personally cultivate the land. According to him, a person will be an agriculturist even if cultivation is done by the members of his family or by hired labourers and in that view of the matter the conclusion arrived at by the Court below that the plaintiff was not an agriculturist is not tenable in law.

According to the learned counsel, the definition of "agriculturist" in clause (?) should have been read along with the definition of "personal cultivation" in clause (10) which would have made it clear that a person who cultivates the land by the members of his family or by hired labour is also an "agriculturist".

For proper appreciation of the submission, it may be expedient to refer to some of the provisions of the Act. Clause (3) of section 3 and the Act defines "agriculturist" to mean ;

"A person who cultivates land personally."

"Personal cultivation" has been defined in clause (10) of the same section to mean :

"Cultivation by the person himself, or by member of his family or by hired labourers on fixed remuneration payable in cash or kind but not in crop share, under personal supervision of the person himself or any member of his

family....."

Section 8 of the Act deals with right of transfer of an occupancy tenant and the limitations thereto. It reads:

"8. Right of transfersAn occupancy tenant shall have a right of transfer in respect of his holding with prior permission of the Government in the manner prescribed. 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."

Section 50 of the Act deals with the consequences of transfer by a tenant otherwise than in accordance with the provisions of the Act. Clause (b) of the said section, which is relevant, reads:.

"(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 persons in possession, place any landless agriculturist as nonoccupancy tenant of the landlord."

From a reading of the aforesaid provisions, it is clear that an occupancy tenant has a right of transfer in respect of his holding. However, the right is restricted in the sense that no transfer can be made to a nonagriculturist. Such transfer, if made, is void under section 50 (b) of the Act.

From a conjoint reading of clause (3) and (8) of section 3 of the Act, it is clear that an "agriculturist" is a person who cultivates land himself or by members of his family or by hired labourers on fixed remuneration payable in cash or kind under personal supervision of himself or any member of his family. Cultivation by himself is not necessary to bring him within the definition of "agriculturist" as given in clause (3). In the instant case, the finding of the learned Courts below is that the plaintiff did not cultivate the land personally but did it by others. It is on the basis of this finding that it was held that the plaintiff was not an "agriculturist".

It appears that the learned Courts below, while interpreting, the expression "'agriculturist" as defined in clause (3) of section 3 of the Act to mean a person who cultivates land personally, failed to take into account the fact that the expression "personal cultivation" has been also defined in clause (10) of the same section to mean "cultivation by the person himself, or by the hired labourers" and thereby arrived at an erroneous finding. The finding arrived at on such an erroneous interpretation of law cannot be sustained. On perusal of the facts of the case and the relevant provisions of the Act, it is clear that the plaintiff was an "agriculturist" and, as such the transfer of land to him was not prohibited under the proviso to section 8 of the Act. The judgments and decrees of the Courts below are, therefore, set aside. The suit of the plaintiff is decreed.

Mr. S. R. Bhattacharjee, the learned counsel for the respondents made an alternative submission that there being no finding that the transfer in question

was made with prior permission of the Government and after notice to the landlord in the manner required under section 8 of the Act, the case should be remanded to the trial Court for determination of the same. This submission of the counsel. I am afraid, cannot be accepted, at this stage. Admittedly, no such objection had been raised at any stage by the respondents before any of the Courts below. In fact, even the objection to the transfer on the ground of the plaintiff being not an agriculturist had not been raised either in the pleadings or in course of trial but was raised only at the argument stage. The appellate Court, however, allowed the same and remanded the matter to the trial Court for deciding a fresh issue as to whether the plaintiff was an agriculturist or not and whether on that account the transfer was void. The trial Court framed a fresh issue, took further evidence and decided the matter afresh. The matter again came in appeal. In appeal also, the transfer was not challenged on any ground other than the one that the plaintiff was not an agriculturist. The question formulated by this Court is also whether the finding of the Courts below that the plaintiff was not an agriculturist is correct or not. Under the circumstances, the respondents cannot be allowed to challenge the transfer in this second appeal on a ground never raised before any of the Courts below. The aforesaid submission of the counsel, therefore, is not tenable.

In the result, the appeal is allowed. No order as to costs.