

(1985) 05 GAU CK 0005
In the Gauhati High Court
Case No : Second Appeal No. 52 of 1978

Jyotish Ch. Chakravarty

APPELLANT

Vs

Dwip Charan Namasudra and Others

RESPONDENT

Date of Decision : 29-05-1985

Acts Referred:

Assam Land Revenue Act — Section 154, 154(1)
Assam Land Revenue Rules — Rule 26
Civil Procedure Code, 1908 (CPC) — Section 11, 80

Citation : (1985) 2 GLR 282

Hon'ble Judges : T.C. Das, J

Bench : Single Bench

Advocate : B. Acharyya, for the Appellant; S.K. Senapati and B.L. Singh, for the Respondent

Final Decision : Allowed

Judgement

T.C. Das, J.—Defendant No. 2 is the Appellant who has raised in this appeal a very pertinent point containing a substantial question of law. Mr. B.K. Acharyya, the learned Counsel who represents the Appellant has urged before me that though the Appellant lost in both the Court yet the learned Court below did not consider the vital aspect of the matter which goes to the root of the dispute and the right to sue by the Plaintiffs. The Respondent-Plaintiff Nos. 1 to 5 and the predecessor in interest of the Plaintiff-Respondent Nos. 6 to 8 were settled with a second class fishery in reaped of which a 30 years lease was granted by the Government. The fishery covered an area of 28 B. 4 K. 4 Ch. in pargana Kalain, Mouza Manipur Part 1 in the district of Cachar. The lease was granted in the year 1954. Before the expiry of the lease a portion of land covered by the said fishery was silted and the Deputy Commissioner declared the said land as waste land covering an area of 9B. 4 Ch. as described in Schedule-B of the plaint. Subsequently this land in Scheduled of the plaint was settled with the Appellant by the Deputy Commissioner. The Plaintiffs, therefore, brought an action in the Court of the Sadar Munsiff at Silchar with the following prayers:

(i) a decree may kindly be passed declaring the right title and interest of the Plaintiffs over schedule A of the plaint.

(ii) Possession of the Plaintiffs over schedule A be confirmed.

(iii) The order of making khas the area described in schedule B by the D.C. Cachar and the settlement of this area of schedule B by the A.S.O. of Katigora circle of Cachar District, be declared illegal, without jurisdiction and inoperative.

(iv) The cost of the suit may kindly be decreed in favour of the Plaintiffs against the Defendants.

(v) Any other relief or reliefs, the Plaintiffs may be entitled, be granted to the Plaintiffs

2. The suit was contested by the Defendant-Appellant and by the State of Assam. The State of Assam in their written statement specifically pleaded that the suit was barred under the provision of Section 154 of Assam Land Revenue Regulation and also it was barred by limitation. The present Appellant (Defendant No. 2) also filed a separate written statement denying the allegations made in the plaint. It was pleaded by the Defendants that the Defendant No. 2 held the periodic patta after getting settlement of the land in Schedule-B of the plaint and possessed the land since the land was settled with Defendant No. 2. Two separate written statements were filed by Defendant Nos. 3 and 4 respectively. The Defendant No. 4 in the written statement specifically pleaded the bar of the institution of the suit in view of the provisions u/s 154 of the Assam Land Revenue Regulation. On the basis of the pleadings of the parties the following issues were struck by the learned trial Court:

1) Is there any cause of action for the suit?

2) Is the suit maintainable in its present form?

3) Is the suit barred under the provisions of Section 154 of the Assam Land Revenue Regulation?

4) Is the S/L identifiable?

5) Is the suit barred for non-compliance of the provisions of Section 80 Code of Civil Procedure?

6) Is the suit barred by limitation?

7) To what relief, if any, the Plaintiffs are entitled?

8) Is the patta in the names of Defendant No. 4 is liable to cancelled?

The learned trial Court, however, decided the vital issues in favour of the Plaintiffs and decreed the suit. Two separate appeals were filed before the learned Assistant District Judge No. 1 at Silchar. One appeal was preferred by Defendant No. 1 and the other by Defendant No. 2. Both the appeals were heard

analogously and by the common judgment the appellate Court disposed of the appeals. The learned appellate Court did not interfere with the finding of the learned Munsiff and upheld the judgment and decree of the learned trial Court. The Defendant No. 2 has only preferred this Second Appeal against the said judgment of the learned appellate Court below.

3. Mr. S.K. Senapati, learned Counsel for the Respondents has raised a preliminary objection that this appeal is not maintainable in view of the provision of Section 11 of the Code of Civil Procedure. The sole ground of Mr. Senapati in raising the objection is that the State of Assam having not preferred any appeal against the impugned judgment the appeal filed by the Defendant No. 2 is barred by res judicata as because Defendant No. 2 is also bound by the impugned judgment which has been passed on the appeal preferred by State of Assam. This objection is absolutely meritless. The Defendant No. 2, the present Appellant has a right to prefer an appeal if his right is infringed by the impugned judgment of the Court below. The State of Assam might not have preferred an appeal but the Defendant No. 2 cannot be precluded from preferring the appeal if otherwise he is aggrieved by the impugned judgment. The provision of Section 11 of CPC is not at all attracted in this regard. Therefore, the preliminary objection is overruled.

4. The main argument of Mr. Acharyya, the learned Counsel for the Appellant centres round the decision of issue No. 4 with regard to the bar of the Civil Court to entertain such nature of a case in view of the provisions u/s 154 of the Assam Land and Revenue Regulation. The relevant portion of the provisions u/s 154 of the Assam Land and Revenue Regulation is quoted herein below as it requires to examine the position relating to the validity of the argument raised by him.

154(1) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following:

(a) questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force;

(b) questions as to the amount of revenue, tax, cess, or rate to be assessed; and the mode or principle of assessment;

(c) the formation of the record-of-rights, or the preparation, signing, or alteration of any document contained therein;

* * *

Section 154 of the Regulation contains several clauses and Sub-sections, but those are not necessary to be quoted for the disposal of this appeal. Clause of Section 154(1) of the Regulation provides that the Civil Court shall not exercise jurisdiction if the depute arise questioning as to the validity and effect of any settlement of the land. Clause (c) of Section 154(1) provides that the Civil Court shall not exercise jurisdiction concerning the formation of records of rights itself,

preparation, signing or alteration of any documents contained therein.

5. The learned Counsel for the Appellant has drawn my attention to the prayer No. (iii) of the Plaintiff. The Plaintiff sought for a declaration that the settlement made in favour of the Appellant in respect of B Schedule land by A.S.O. and the order of the D.C. making the land khas to be declared as illegal, without jurisdiction and inoperative, in conformity with this prayer the learned appellate Court also held that Rule 26 of Settlement Rules does not empower the Deputy Commissioner to cancel the lease of the Plaintiffs and to settle the land finally with Defendant No. 2 (the present Appellant). The learned appellate Court below observed that under Rule 26 of the Settlement Rules, once the settlement is given, it is only the Commissioner who is to confirm or cancel the same. Rule 26 contains the following words:

Subject to the general control of the State Government, the Commissioner shall have power to confirm all settlements, and also to cancel any settlement made in contravention of these rules.

In the above context the learned appellate Court below held that the Deputy Commissioner had no jurisdiction either to cancel or alter the settlement already made in favour of the Plaintiffs as the Deputy Commissioner has no jurisdiction to settle the land with Defendant No. 2. Finally the appellate Court concluded with the following words:

As I have already discussed, the Deputy Commissioner had no jurisdiction to cancel the patta of the suit land whether it is a secondary fishery or not. Therefore, the settlement made in favour of the Defendant No. 2 or/and Defendant No. 4 while the settlement in favour of the Plaintiffs are in existence, is void.

Referring to the above findings, the learned Counsel for the Appellant has led me to the provisions of Clause (a) of Section 154(1) of the Regulation with the submission that the Civil Court is debarred from questioning the legality, validity and/or effect of any settlement of land made by the revenue authority. The legality of such settlement only be determined by the revenue authority as provided under provisions of the regulation. The jurisdiction of the Civil Court has been taken away by the very provision of Section 154 of the Regulation in the matter enumerated therein. Therefore, the Civil Court cannot make any adjudication as regards settlement of the land already made in favour of the Appellant. The contention of the learned Counsel appears to have sufficient force.

6. Mr. Senapati, the learned Counsel for the Respondents has seriously contended before me that if any such settlement is made in the violation of the provisions of Assam Land and Revenue Regulation and the rules framed under the Settlement Rules, the said settlement must be treated as no settlement at all in the eye of law. The order for such settlement being ab initio void, the aggrieved party may approach the Civil Court for such a declaration against the order of settlement. If this contention is accepted, the provisions of Section

154(1) of the Regulation would be nugatory as because the validity of the settlement would be a question before the Civil Court and the restriction as to the jurisdiction u/s 154(1) would not be attracted. On bare perusal of the said provisions of the Regulation one must say that no Civil Court would entertain any civil action where a decree would contain a declaration of settlement on the question of its validity. Here is a case where it appears that in substance, the prayer of the Plaintiffs is for a declaration questioning the validity and legality of the order of settlement relating to Schedule land made in favour of the present Appellant. The learned appellate Court below failed to consider the provision of Section 154 of the Assam Land and Revenue Regulation which debars the Civil Court from entertaining such nature of a suit where the main dispute between the parties relates to the validity of an order of settlement of land made by the revenue authority. The contention of Mr. Senapati, the learned Counsel for the Respondents appears to have no force in the present context of the dispute.

7. In the context of the pleadings of the parties I am of opinion that Issue No. 3 is a vital issue to uproot the contentions of the Plaintiffs relating to the main relief as prayed for in the suit. I am of the opinion that the provision of Clause (a) of Section 154(1) of the Assam Land Revenue Regulation stands on the way which debars the Plaintiffs to pray for such a relief in the Civil Court questioning the validity of the order of settlement of the land. Therefore, the Plaintiffs suit must fail being hit by the provisions of Section 154(1) of the Regulation. The judgment and decree of the learned Courts below are set aside.

8. In the result, the appeal is allowed. But on the facts and circumstances of the case I leave the parties to bear their own cost in this appeal. Before I part with the record I would like to observe that it would be open for the Plaintiffs to move the revenue Court relating to the matter of dispute if otherwise the Plaintiffs are not legally disabled to make such approach.