
(1984) 03 GAU CK 0015

In the Gauhati High Court

Case No : Civil Revision No"s. 13 (SH) and 27 (H) of 1983

KA Trily Tariang

APPELLANT

Vs

U. Resdrikson Lyngdoh and Others

RESPONDENT

Date of Decision : 16-03-1984

Acts Referred:

Land and Revenue Act — Section 154, 154(1)

Citation : (1984) 2 GLR 8

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Advocate : N.M. Lahiri, M.Z. Ahmed and G.N. Sahewalla, for the Appellant; S.C. Das, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, J.—The Courts below have non-suited the Appellant Plaintiff on the ground that Section 154(1) of the Assam Land and Revenue Regulation, 1886 debars the Courts to entertain the suit.

2. The Plaintiff instituted T.S. No. 2 of 1980 against the Defendants in the Court of the Assistant to the Deputy Commissioner, Jaintia Hills at Jowai praying for declaration of her right, title and interest in the plot of land fully described in the plaint. She also asked for other reliefs.

3. The Plaintiff claimed that she had inherited the suit land from her mother. After the Plaintiff had sold some matured pine trees standing on the land to U. Kwor Suchiang, Defendant No. I lodged an application with the Revenue Officer, Jaintia Hills Autonomous District Council, Jowai alleging the authority of the Plaintiff to deal with the timber in the pine grove. Defendant No. I claimed that the pine grove, named in the plaint belonged to him. A Revenue case was taken up and the Assistant Revenue officer passed an order in favour of the Plaintiff. Against the said order Defendant No. I preferred an appeal. The appellate authority accepted the appeal, set aside the order of the Assistant Revenue

Officer and declared that the claim of the Defendant was justified. The Plaintiff filed the present suit for declaration of her right, title and interest in the suit land. She sued Defendant No. I and made the Chief Executive Member, Jaintia Hills Autonomous District Council, Jowai and the Jaintia Hills Autonomous District Council is party Defendants. The trial Court held that in view of the decision of the Revenue Court declaring that the suit land belonged to Defendant No. I, the Civil Court had no jurisdiction to entertain the suit, The appellate Court also reached the same conclusion,

4. Indeed, the provisions of the CPC are not applicable in the area but the spirit thereof do apply under the Rules for Administration of Justice and Police, The Civil Court has undoubted jurisdiction to try all suits of "Civil nature" except those the cognizance of which is either expressly or impliedly barred. Section 154 of the Assam Land and Revenue Regulation, which was considered by the Courts below as bar standing in the way of the Civil Court to decide the right, title and. interest of the Plaintiff, reads as follows:

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) * * *

* * *

(m) * * *

5. In none of the orders of the courts below it is stated that the decision made by the appellate authority was covered by any of the clauses of Section 154(1) of the Regulation. The matters which are specifically set forth in Clauses (a) to (m) are matters within the jurisdiction of the Revenue Court. These matters may not be triable in a civil court. However, if a decision is" made in purported exercise of powers under any of the clauses of Section 154(1) of "The Regulation", or if the Revenue authority acts without jurisdiction or in excess of its jurisdiction or with material irregularity causing injustice to the parties, the civil court will have undoubted jurisdiction to try the action even though it was purportedly made under Clauses (a) to (m) of Section 154(1) of the Regulation.

6. Be that as it may, in the Instant case, the courts below could not reach the conclusion that the case fell within any of the clauses of Section 154(1) Without reaching the conclusion a Civil Court cannot refuse to entertain a plaint, the way in which the Courts below have acted in the instant case.

7. The question of jurisdiction of the Civil Court in matters covered by clauses (a) to (m) of Section 154(1) of the Regulation came up for consideration. In various cases including in The State of Assam v. Sofat Ali AIR 1967 A and N 3 (DB). Dealing with Clause (a) of Section 154(1), their Lordships observed:

This does not debar the civil court from entertaining suit? based on title to the

property. The Plaintiff case is that the periodic patta in their favour creates a rights of the Plaintiffs in the property and that right has been affected by the order of the Commissioner.

In that case as well, the Commissioner acting under Rule 26 of the Settlement Rules had passed an order but the Plaintiffs sued the State of Assam claiming his title to the property. The plea of bar u/s 154(1)(a) was taken. Their Lordships held that the provision did not preclude the civil court to entertain suits based on title to the property. Declaration of title to immovable property is out of bound for the Revenue court.

It can determine many controversies including those covered by clauses (a) to (m) of Section 154(1) of the Regulation but the civil court is the court competent to decide right, title and interest to immovable property. A civil court cannot only declare title to the property but it can also adjudicate that the Revenue Officer or the courts acted beyond their jurisdiction resulting in a failure of justice. In *Dinesh Chandra Sarkar v. Harendra Biswas* AIR 1972 Gau. 81, this Court has held that suit for declaration of right, title and interest is not barred by Section 154(1) of the Regulation. Dealing with the provisions of Section 154 of the Assam Land and Revenue Regulation it was held that the matters within the jurisdiction of the Revenue authorities or courts could be decided by them but no such decision of a revenue court could take away the jurisdiction of a civil court, when a person having a right to an asset claimed entitlement to it and sought declaration of his right in the civil court notwithstanding the provisions contained in Section 154(1)(a) of the Regulation.

8. For the foregoing reasons and on the authorities referred to above, I have no hesitation in stating that in the instant case the impugned judgment and order are liable to be set aside with a direction to the Assistant to the Deputy Commissioner to entertain the suit and to proceed on with it in accordance with the law, which I hereby do.

9. Mr. S.C. Das, learned Counsel for Respondent No. 1 submits that the Defendant may be allowed to take the plea of bar u/s 154(1) of "the Regulation", in their written statements. Indeed, the Defendant shall be entitled to take up the plea and the court may frame an issue on that basis and decide the same in accordance with the law. However, the trial court, instead of deciding the issues in piecemeal shall decide all the issues together.

10. In the result, the petition is allowed. However, I make no order as to costs as Mr. Das had very rightly accepted the legal position as set out above.

Send down the records to the Assistant to the Deputy Commissioner, Jowai.