

(2019) 05 GAU CK 0002

In the Gauhati High Court

Case No : Regular Second Appeal No. 82 Of 2008

Kamal Borah And Ors

APPELLANT

Vs

Biren Saikia And Ors

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144, 145
Transfer Of Property Act, 1882 — Section 53, 53(A)
Assam Land And Revenue Regulations, 1886 — Regulation 9, 160, 160(2), 162(1),
162(2), 162(3), 163, 163(2), 163(2)(a), 163(2)(b), 163(2)(c), 164, 165, 167, 171
Code Of Civil Procedure, 1908 — Order 41 Rule 31

Citation : (2019) 05 GAU CK 0002

Hon'ble Judges : Prasanta Kumar Deka, J

Bench : Single Bench

Advocate : K K Mahanta

Final Decision : Dismissed

Judgement

1. Heard Mr. K. K. Mahanta, the learned Senior Counsel assisted by Mr. B. Deka, the learned counsel for the appellants and Ms. T. Goswami, the learned counsel for the respondents.

2. The present respondents as the plaintiffs filed Title Suit No.12/1995 in the Court of learned Civil Judge (Senior Division) Lakhimpur at North Lakhimpur against the present defendants/appellants. The suit land measuring 2 Bighas 2 Kathas 3 Lechas covered by Dag No.8 of periodic patta No.14 of Nijlaluk Map under Laluk Mouza in the district of Lakhimpur stands in the name of plaintiff/respondent No.1 who possessed alongwith other plaintiffs/respondents from the days of their forefathers. On 03.07.1990 and 04.07.1990, the defendants/appellants dispossessed the plaintiffs/respondents and ploughed over the suit land. A proceeding under Section 144 Cr.P.C. was initiated and the suit land was attached by the Executive Magistrate, Lakhimpur. Though Title Suit No.25/1991 was filed in the court of learned Civil Judge, (Junior Division) Lakhimpur at North Lakhimpur but on objection raised by the defendants/appellants on the ground of

pecuniary jurisdiction of the court, the plaint was returned to the plaintiffs/respondents on 20.03.1995. Thereafter, Title Suit No.12/1995 for declaration of right, title and interest recovery of khas possession and permanent injunction was filed in the appropriate court.

3. The defendants/appellants filed joint written statement and took the defence that the suit land is situated in the Tribal Belt and the parties to the suit being non-tribal as such the plaintiffs/respondents are not entitled to any relief from the Civil Court. The suit is barred by limitation and also barred under Section 53(A) of TP Act. The conversion of the suit land to periodic patta is a fraudulent one. Denying the plea of dispossession of the plaintiffs/respondents it is the pleaded case that the mother of the plaintiffs/respondents after death of her husband sold the suit land to the defendants/appellants by executing a registered deed bearing No.701/1970 on 17.06.1970 at a valuable consideration whereafter possession was delivered to the defendants/appellants. Alternatively, they took the plea that the defendants/appellants are possessing the suit land in open and peaceful manner since the transfer on 17.06.1970.

4. The trial court framed the following issues:-

"1. Whether there is cause of action for the suit?

2. Whether the suit land is under the Tribal Belt and the Civil Court has jurisdiction to try this suit?

3. Whether the suit land was sold to the defendants by the plaintiffs by a registered Sale Deed No.701/70 dt.17.6.70 and delivered possession over the suit land to the defendants?

4. Whether the suit is barred U/S 53(A) of the T.P. Act?

5. Whether the defendants are in peaceful possession over the suit land from 17.6.70?

6. Whether the suit is barred by limitation?

7. Whether the suit is bad for non-joinder of party?

8. To what relief the plaintiff is entitled?"

5. The plaintiffs/respondents adduced evidence of 5 (five) witnesses and the defendants/appellants adduced 3 (three) witnesses. The trial court decreed the suit.

6. The trial court relied the decision of Munindra Ch. Dey -vs.- Kamal Ch. Bora, reported in 1977 A.L.R. 75 and held that Section 167 of the Assam Land and Revenue Regulation (hereinafter referred to as 'the Regulation') under Chapter-X is not an absolute bar but is a limited restriction imposed in connection with the matters covered by the Chapter-X. It does not oust the jurisdiction of the Civil Court in respect of matter not covered by Chapter-X nor to decide an issue as to whether the matter is covered by the said Chapter-X. Referring further decisions

of the Hon'ble Gauhati High Court, the trial court also considered that Chapter-X does not take away the right of the patta holders for eviction of a person in unauthorised occupation of his patta land through the Civil Court. However, if the Deputy Commissioner proceeds to take or has taken any action under Section 165 or any other Section of the Chapter that cannot be questioned in any Civil Court. Referring Rule 12 framed under Section 171 of Chapter-X of the Regulation empowering the Deputy Commissioner to evict an unauthorised person found in occupation of land held under periodic patta in the Tribal Belt also does not expressly or impliedly bars the jurisdiction of the Civil Court. Accordingly, it held that the Civil Court has the jurisdiction to try the suit.

7. The trial court took up issue Nos. 3, 4 and 5 and in order to decide the same, the trial court took note that the plaintiff No.2, widow of late Purna Saikia in order to overcome the financial distress to maintain her alongwith the children sold her possessory right over the suit land to the defendants/appellants vide registered deed No.701/1970. On the basis of the said sale transaction, possession was delivered to the defendants/appellants. It considered Section 162 sub-Section 3 of the Regulation which speaks that no document evidencing any transaction for requisition or possession of any land by way of transfer, exchange etc. after the commencement of the Assam Land and Revenue Regulation (Amendment) Act, 1964 shall be registered under the Registration Act, 1908 if it appears to the registering authority that the transaction has been effected in contravention of the provisions of Sub-Section 2. The said Sub-Section 2 of Section 162 speaks notwithstanding anything to the contrary in any law no persons shall acquire or possesses by transfer, lease agreement of settlement in any area or areas constituted into Belts or Blocks in contravention of provisions of Sub-Section-1. Accordingly, the trial court held that the sale transaction vide sale deed No.701/1970 dated 17.06.1970 long after the amendment of the regulation in the year 1964 as void and as such, the question of any part performance under Section 53 of the T.P. Act by the plaintiffs/respondents does not arise at all. Further it was held that as the sale deed on the strength on which the defendants/appellants claimed to be in possession of the suit land also is illegal and as such, all the issues were decided in favour of the plaintiffs/respondents.

Further deciding the issue of non-joinder against the defendants/appellants, the suit was decreed on contest.

8. The defendants/appellants filed Title Appeal No.02/2001 in the Court of learned Additional District Judge (FTC), North Lakhimpur which was also dismissed vide judgment and decree dated 25.01.2008. The first appellate court considered the findings of the trial court and upheld the same.

9. Being aggrieved by the said judgment and decree of the first appellate court, the defendants/appellants filed this second appeal which was admitted on the following substantial questions of law:-

"1. Whether the impugned decree of the lower appellate court declaring the right, title interest with delivery of khas possession of the suit land is hit by regulation of ALRR 1886?

2. Whether the learned Lower Appellate Court erred in law in holding that the plaintiff has acquired a valid title over the suit land and right to possess the same, notwithstanding the bar contained in regulation of 162 of ALRR 1886?

3. Whether in view of the regulation 162 of ALRR 1886, the finding and impugned decree as a whole is a nullity and is liable to be set aside?

4. Whether the findings recorded by the learned Lower Appellate Court regarding dispossession of the plaintiff is perverse and the judgment thereof is hit by the Order 41 Rule 31 of the Code of Civil Procedure?"

10. Mr. Mahanta, the learned Senior Counsel submits that the plaintiffs/respondents failed to plead and prove the date of entry prior to the notification under Chapter-X of the Assam Land and Revenue Regulation (ALRR). Accordingly, a presumption goes against the plaintiffs/respondents that they were not possessing the land prior to the notification by the Government in the year 1964 declaring the area to be covered under Chapter-X of the ALRR. Though, the copy of the Jamabandi and the patta are exhibited by the plaintiffs/respondents, the same cannot confer any title inasmuch as the plaintiffs/respondents are not claiming that their forefathers had title over the land. It is further contended that if the court below declares the sale deed of the defendants/appellants to be invalid under such circumstances, the court cannot declare the right, title and interest of the plaintiffs/respondents over the suit land inasmuch as it is an admitted fact that both the parties to the suit are non-tribal and beyond the scope of the tribes defined under Chapter-X. The defendants/appellants had specifically raised the issue that the Civil Court has no jurisdiction to decide the suit but even then the courts below decreed the suit in favour of the plaintiffs/respondents declaring the right, title and interest in their favour.

11. Ms. Goswami, on the other hand, in order to counter the submission of Mr. Mahanta submits that the plaintiffs/respondents need not prove their entry into the suit land before the notification and referred to the evidence of the defendant/appellant No.1 as DW-1 who admitted possession of the plaintiff's side much prior to 1970. Citing the ratio of Munindra Ch. Dey and Others -vs.- Kamal Ch. Bora and Others (supra) she supports the findings of the court below. It is also submitted that the patta issued to the plaintiff/respondent No.1 in the year 1979 has to be considered unless there is any evidence to discard the same.

12. I have considered the submissions of the learned counsel. Mr. Mahanta strenuously placed his argument on the ground that if the Civil Court has authority to hold a sale of any immoveable property falling under the Tribal Belt as defined under Chapter-X of the Regulation as void similarly the Civil Court has no jurisdiction to declare the right, title and interest of the plaintiffs/respondents when both the parties are non-tribals. In order to find an answer to the

submission of Mr. Mahanta, it would be proper to take note of the pleadings of the parties. The case of the plaintiffs/respondents is that the suit land covered by periodic patta No.14, Dag No.8 of Nijlaluk Map under Mouza Laluk stands in the name of plaintiff/respondent No.1 and the same is in his possession. The defendants/appellants forcefully entered into the possession of the suit land and caused breach of peace and tranquillity. Though 145 Cr.P.C. proceeding was initiated but as under Section 145 Cr.P.C. the trial Magistrate can decide the possession of the land before 2(two) months prior to dispossession as such, the plaintiffs/respondents approached the Civil Court for a decree of declaration of right, title and interest over the suit land and recovery of khas possession in favour of the plaintiff/respondent No.1. The defendants/appellants in their written statement pleaded that the suit land is situated in the Tribal Belt and both the parties to the suit are non-tribal and as the remedy of the plaintiffs/respondents lie before the Deputy Commissioner, the Civil Court cannot interfere and declare the right, title and interest. Vide registered Sale Deed No.701/70 on 17.06.1970 the suit land was sold by the widow (mother of the plaintiff/respondent No.1) of late Purna Saikia delivering khas possession of the suit land to the defendants/appellants. Denying the fact of dispossession, the defendants/appellants sought for dismissal of the suit.

13. Both the courts below held that the Civil Court has jurisdiction to try the suit. Further the registered Sale Deed No.701/70 was declared void in view of the provisions of the Regulation under Chapter-X. The plaintiff/ respondent No.1 while deposing as PW-1 relied the periodic patta No.14 and exhibited the same as Ext-6. On perusal of the said patta, it is seen that the same was issued for the use in the Tribal Belt thereby stipulating the conditions that the plaintiff/respondent No.1 cannot violate the provisions under Section 160(2), 163(2) of the Regulation. On the other hand, if the sale deed bearing No.701/70 i.e. Ext-Ka is looked into it is found that the land sold purportedly by Damayanti Saikia on 17.06.1970 was covered by annual patta i.e. under annual lease. Admittedly Damayanti Saikia the plaintiff/respondent No.1 is the mother of Biren Saikia. Accordingly, it can be held that in the year 1970 the suit land was covered by annual patta standing in the name of the father of the plaintiff/respondent No.1. The intent and purpose of introduction of Chapter-X under Section 160 in the Regulation is for protection of backward classes who on account of their primitive condition and lack of education or material advantages are incapable looking after the welfare insofar as such welfare depends upon their having sufficient land for their maintenance and the State Government by notification in the official gazette may specify the class of people whom it thinks entitled for protection by such measures as aforesaid. Section 162(1) authorises the State Government by notification in the official gazette that the provisions of the Chapter-X shall apply to the areas and disposal of land by lease for ordinary cultivation, the nature and extent for rights conveyed by annual or periodic leases, the termination or forfeiture of such rights etc. be governed by the provisions of Chapter-X and rules made thereunder. Section 162(2) however

stipulates with a non-obstante clause that notwithstanding anything to the contrary in any laws contract or agreement no persons shall acquire or possess by transfer, exchange, lease, agreement for settlement any land in any area constituted into belts or blocks in contravention of the provisions of sub-Section 1 of Section 162. Section 163 provides the mode for disposal of land for the purpose of cultivation. The disposal of the land in the Tribal Belt for the purpose of ordinary cultivation etc. shall be in concurrence of such policy and procedure as may be adopted and directed by the State Government. In adopting and directing such policy, the State Government shall take into consideration other persons belonging to other class of people residing in the Belt or Block from before the constitution of the Belt or Block. Section 164 provides that a land holder shall have a right of use and occupancy in the land holder subject to any restrictions and modifications of Section 9 of the Regulation. There is a specific bar of acquisition in a Belt or Block that no land holder shall transfer his land in a Belt or Block to any person not belonging to class of people notified under Section 160 or to any person not to be a permanent resident in a Belt or Block.

14. Chapter-IX of the Rules under the Regulation covers the rules framed under Section 171 of Chapter-X of the Regulation for disposal of land within the Tribal Belt or Blocks. As per Rule 6, all settlement shall, in the first instance, be on annual lease. The land should be acquired and brought under cultivation except such areas as are required for growing thatch and sun grass for bonafide use of the family or the grazing of cattle. No land held under annual lease shall be transferred or sublet. The land settled on annual lease may be converted into periodic lease when the conditions prescribed in Rule 105 of the Land Records Manual are fulfilled and the requisite premium if any fixed by the State Government has been paid. The settlement Rule 11 prescribes that if any person belonging to the classes of people notified under Section 160(2) or mentioned in Section 163(2) (a, b & c) is found in occupation of any waste land otherwise then in accordance with the settlement rules, he shall be evicted.

Section 167 under Chapter-X of the Regulation stipulates that no Civil Court shall exercise jurisdiction in any of the matters covered by Chapter-X.

15. In the present case in hand as hereinabove stated the defence of the defendants/appellants is on the basis of the sale deed by way of which the suit land was purportedly transferred in their favour by the mother of the plaintiff/respondent No.1. Admittedly, transfer of land situated within the Tribal Belt and that too amongst the non-tribals took place. The plaintiff/respondent No.1 had proved the periodic patta No.14 Ext-6 which is issued for the purpose of using it within the block/belt created under Chapter-X of the Regulation. From the sale deed No.701/70 it is seen that the suit land was under annual patta in the year 1970. The periodic patta No.14 i.e. Ext-6 was issued on 21.09.1979 in the name of the plaintiff/respondent No.1. If we go back and take note of Rule 6 under Chapter-IX referred hereinabove the settlement of the suit land was in the first instance on annual lease and the same was cleared making suitable for

cultivation as required under Rule 6 This is apparent from the contents of the sale deed wherein the consideration amount of Rs.1400/- was due to clearing of the jungle of the suit land. On the basis of the said annual patta, in the year 1979 the periodic patta No.14 Ext-6 was issued to the plaintiff/respondent No.1 for exclusive use in the Tribal Belt.

16. The plaintiff/respondent No.1 sought for his declaration of right, title and interest over the suit land. The necessity of a declaration from the Civil Court is to establish and strengthen the title of the plaintiff in order to counter the adverse attack on it and also to clear what is doubtful and necessary to prevent future litigation. In order to get the declaration, the plaintiff must show subsisting right not only on the date of the suit but also on the date of decree and the said title is equivalent to that 'title' which can be equated in my opinion, to the 'legal character' of the plaintiff which originates/flows from the terms of a specific law say for instance, status of land holder under Section 9 of the Regulation and endowed on the plaintiff in his individual capacity. The plaintiff/respondent No.1 in the evidence by producing Ext-6, the periodic patta No.14 sought for the 'legal character' endowed on him as the land holder within the limited rights which is incident on him under Chapter-X of the Regulation. The said 'status'/ 'legal character' is very much in existence on the date of filing the suit by the plaintiff ascribed by the competent authority as required under the rules and if the Civil Court declares the said 'legal character' of the plaintiff/respondent No.1, said declaration cannot in my opinion, be held to violate the provision under Section 162 Sub-Section 2 that no person shall acquire or possession by transfer, exchange, lease or settlement in any areas constituted into Belts or Blocks contravening sub-Section 1 of Section 162 under Chapter-X of the Regulation. On the other hand, Ext-Ka is an instrument which is registered in the Office of the Sub-Registrar, North Lakhimpur purchasing the possession of the suit land which is a document evidencing the transaction for possession of any land by way of transfer and under Section 162(3) of the Regulation specifically bars such registration from the commencement of the Assam Land and Revenue Regulation (Amendment) Act, 1964. The said bar is with respect to registration of any instrument evidencing transfer of a plot of land in the Tribal Belt but it does not say that it covers any declaration by a Civil Court. It is true that the matter in dispute in the suit as raised in the plaint does not cover any matters under Chapter-X but if a person in clear violation to the provision of Section 162 Sub-Section (3) takes a defence, the Civil Court in terms of the said provision has the power and authority to disregard the force of the said sale transaction because of the fact that the Court cannot accept something which is done in clear violation of a provision under the statute.

17. In *Munindra Chandra Dey and Ors. -vs.- Kamal Chandra Bora and Ors.* (supra), this Hon'ble Court while examining the ambit and scope of Section 167 of the Regulation which stipulates that no Civil Court shall exercise jurisdiction in any of the matters covered by the Chapter-X held as follows:-

"14. The Section only ousts the jurisdiction of a Civil Court 'in any of the matters covered by this Chapter.' In my opinion the expressions "matters covered" cannot, in any view of the matter include the right to get a declaration of title and to get khas possession, as the Authorities constituted under Chapter X have no such power to decide the issues which are to be raised in a suit Exclusion of civil courts' power should not be readily inferred- the Statute must either expressly or by implication so declare. Section 167 is not an absolute bar but is a limited restriction imposed in connection with the matters covered by the Chapter, if such acts are done in terms of the powers and jurisdiction vested under the said Chapter. There is nothing in the Section to read that it ousts the jurisdiction of the Civil Courts (i) in respect of matters not covered by the Chapter nor (ii) to decide an issue as to whether the matter is so covered by the Chapter."

18. From the aforesaid discussion and keeping in view the jurisdiction of the Civil Court vis-a-vis Section 167 of the Regulation, the Civil Court can declare the right, title and interest with delivery of khas possession to a person holding a periodic patta issued specifically for the purpose of use within the Block or Belt created under Chapter-X of the Regulation. There is no bar in disposal of land for purposes of cultivation to the persons belonging to other classes of people residing in the Belt or Block before the constitution of the Belt or Block. In the present case in hand as discussed hereinabove, the suit land was under annual lease subsequently converted to periodic patta which conforms to the settlement rules referred hereinabove. It is not the case of the defendants/appellants that the lease either annual or periodic granted in favour of the plaintiff/respondent No.1 was cancelled by the Deputy Commissioner as per Section 165 under Chapter-X of the Regulation. Had it been so the matter falls within the scope of Section 167 of the Regulation and the Civil Court cannot give a declaration against such act of the Deputy Commissioner who is the authorised person to carry out ejectment and eviction of any person from the Belt. Thus, the declaration granted by the Civil Court in favour of the plaintiff/respondent No.1 over the suit land is proper and the decree passed by the trial court and concurred by the first appellate court cannot be termed to be a nullity and cannot be set aside.

19. The learned trial court took note of the fact from the plaint and depositions of the plaintiff's witnesses that the defendants/appellants encroached the suit land on 03.07.1990. The plaintiffs/respondents initiated a proceeding under Section 145 Cr.P.C. and thereafter, the plaintiff filed the suit seeking the relief for recovery of possession. The court below further considered that the defendants/appellants failed to prove the possession since the year 1970 against their pleadings in their written statement. On the other hand, the act of initiating the proceeding under Section 145 Cr.P.C. by the plaintiff/respondent No.1 makes it probable by way of preponderance of evidence that the plaintiff/respondent No.1 was dispossessed from the suit land on 03.07.1990. The first appellate court came to the conclusion that the fact of issuance of the periodic patta, Ext-6 in

the year 1979 itself shows the possession of the plaintiff/respondent No.1 over the suit land. Accordingly, immediately after the dispossession on 03.07.1990, the plaintiff/respondent No.1 was accrued with the right to sue for recovery of possession of the suit land. Moreover, even if there was no dispossession and the claim of the defendants/appellants as pleaded but on the basis of Ext-Ka, the sale deed then also the plaintiff/respondent No.1 is entitled to get the relief of recovery of possession after disregarding of the sale deed as null and void inasmuch as Ext-6 still remains in force and that itself is sufficient to dislodge the claim of possession by the defendants/appellants. The evidence of PW-3 denied the suggestion that the defendants/appellants were possessing the suit land since the year 1970 against the statement made supporting the claim in the plaint. The defendants/appellants even failed to cross-examine the plaintiff/respondent No.1, PW-2 disowning the fact of his dispossession in the year 1990 which he deposed in his examination in chief.

20. From the discussions above, all the substantial questions of law are answered against the defendants/appellants resulting dismissal of this second appeal.

21. Send back the LCR. No cost.