

(1984) 03 CAL CK 0045
In the Calcutta High Court
Case No : App. Decree No. 1627 of 1973

Kandan Mandi @ Santal and Others

APPELLANT

Vs

Santi Prosad Chatterjee and Others

RESPONDENT

Date of Decision : 14-03-1984

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 44(1)

Citation : 88 CWN 789

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : Haridas Ghose, for the Appellant; J.K. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

G.N. Ray, J.—This appeal arises out of the judgment and decree passed by the learned Subordinate Judge, Second Court, Midnapore, in Title Appeal No. 412 of 1970 reversing the judgment and decree passed by the learned Munsif, Garbeta, in Title Suit No. 160 of 1967. The plaintiffs are the appellants in the instant appeal and the said suit was instituted by the plaintiffs for declaration of title and for permanent injunction in respect of plot No. 605 of Mouja Betjharua. It is the case of the plaintiffs that the said disputed plot No. 605 along with another plot No. 516 constituted a "jote" measuring 1.23 acres and the said land had been held by the predecessor-in-interest of the plaintiffs, namely, Kormu Santhal. In the C.S. record of rights the said "jote" was recorded in the name of Kormu Santhal in Khatian No. 132. The plaintiffs have contended that the said Kormu Santhal and thereafter his successor-in-interest including the plaintiffs have owned and possessed the said lands but in the revisional record of rights plot No. 516 has been recorded in the name of the plaintiffs and/or their predecessor-in-interest in khatian No. 132 but the disputed plot No. 605 has been wrongfully recorded as the khas khatian of the landlord Akshoy Kumar Roy. In view of such erroneous entry in the re-visional record of rights, the heirs of said Akshoy Kumar Roy have been attempting to dispossess the plaintiffs. Accordingly, the

said suit had to be instituted by them. It may be noted that the State of West Bengal was impleaded as a party defendant in the said suit.

2. The said suit was contested by the defendants Nos. 1 to 5 jointly by filing a written statement and it has been contended in the said written statement that there had been a settlement of the said two plots comprising the "jote" measuring 1.23 acres in favour of Kormu Santhal. But soon after the C.S. record of rights, the said Kormu Santhal has surrendered the disputed plot within the said "jote" and the landlord Akshoy Kumar Roy converted the suit plot, on such surrender, as his khas land and the said plot along with plots Nos. 602, 603 and 604 all belonging to the landlord were formed into a single block without any intervening "ail" and the landlord had thereafter started possessing the same. In the aforesaid circumstances, the re-visional record of rights had been prepared correctly and the objection u/s 44(1) of the West Bengal Estates Acquisition Act made by the plaintiffs was overruled.

3. It appears that a Pleader Commissioner was appointed for inspection of the said disputed plot and from the report of the Pleader Commissioner it transpires that there was existence of the "ail" in some portion of the said disputed plot and in other portion, the "ail" had been removed very recently and transplantation of paddy was made on such removed portion but the said fact could be detected by the Commissioner at the time of local inspection.

4. The learned Munsif has held that the defendant landlords failed to establish by any cogent evidence as to how the disputed plot had been surrendered by Kormu Santhal and he has come to the finding that in the absence of such surrender the tenancy in favour of the said Kormu Santhal cannot be scrapped. He has also taken into consideration the report of the Pleader Commissioner and has noted that the case of the defendants that the suit plot was converted into a compact block after making it khas cannot be accepted because, the existence of "Ail" could be detected at the time of local inspection of the said plot. The suit plot and other plots were not made into a compact block as alleged by the defendants. The learned Munsif has also noted that no document in support of the case of surrender could be filed by the defendants and the reason for surrendering the said plot by Kormu Santhal also does not stand scrutiny. In that view of the matter the learned Munsif accepted the case of the plaintiffs and decreed the said suit.

5. The contesting defendants preferred the said Title Appeal No. 412 of 1970 and the said appeal was heard by the learned Subordinate Judge, Second Court, Midnapore. The learned Subordinate Judge, however, drew an adverse inference against the plaintiffs for their failure to produce tent receipts to show that the old "jote" was still continuing. The learned Subordinate Judge was of the view that as the record of rights in respect of the disputed plot was in favour of the defendants, it was not for the defendants to explain how the said plot was recorded in their favour. The learned Subordinate Judge proceeded on the footing that the learned Munsif had shifted the onus of proving the case on the shoulder

of the defendants but the onus lay heavily on the plaintiffs and they had failed to discharge such onus. In that view of the matter, he allowed the appeal and dismissed the suit.

6. The learned Counsel appearing for the appellants has contended that it is an admitted case of the parties that the said plot had been settled to Kormu Santhal and the said plot along with another plot formed a single "jote" and in the C.S. record of rights the said "jote" was recorded in the name of Kormu Santhal. In such circumstances, there must be a presumption in law that the said tenancy had been continuing and non-payment of rent for some time cannot extinguish the said tenancy. The learned Counsel has contended that the learned Subordinate Judge misconceived the legal position about the continuance of the tenancy in the absence of any proof of extinguishment and he erred in law in proceeding on the footing that the onus lay on the plaintiffs to establish that the said tenancy had continued and the same had not been extinguished as contended by the defendant. In my view, the said contention of the learned Counsel for the appellants is quite justified. When the defendants had admitted that the tenancy in respect of the disputed plot was created in favour of the predecessor in interest of the plaintiffs, there was no responsibility for the plaintiffs to prove that such tenancy had been continuing all along. The defendants having alleged that the said tenancy had come to an end because of surrender by Kormu Santhal, it was for the defendants to establish such facts of surrender by convincing evidence. Non-payment of rent may be one of the factors to prove the case of surrender but by itself, non payment of rent does not establish extinguishment of a tenancy as a matter of course. It appears that as the revisional record of rights finally framed and finally published in respect of the disputed lands was in favour of the defendants, the learned Subordinate Judge proceeded on the footing that the said defendants had no responsibility to prove their title in respect of the disputed land. In my view such approach is not correct. The revisional record of rights is not a document of title as such but it has got a presumption of correctness which is also rebuttable and such presumption is primarily in respect of the possession of land. The initial onus of the plaintiffs to prove that the predecessor-in-interest of the plaintiffs had title and such title had not been extinguished was discharged by the plaintiffs. It was, therefore, necessary for the defendants to establish that although the predecessor-in-interest of the plaintiffs had title in respect of the disputed land and had also possession thereof upto the time of preparation of C.S. record of rights, there had been surrender of the disputed plot thereafter. The learned Munsif has given cogent reasons as to why he was inclined to accept the case of the plaintiffs but such reasoning had not been considered by the court of appeal below and the learned Counsel for the appellant is justified in contending that the judgment passed by the Court of appeal below is not a proper judgment of reversal.

7. In the aforesaid circumstances, the learned Munsif was justified in holding that the plaintiffs had title to and possession of the disputed land and he was right in

decreeing the suit. Mr. Banerjee, learned Counsel for the respondents has, however, submitted that as all the reasonings of the trial court have not been considered properly by the court of appeal below, it will be only desirable to set aside the judgment and decree of the appeal court and send the case back on remand for proper adjudication by the court of appeal below. He has submitted that it will not be proper and for the interest of justice to affirm the judgment and decree passed by the trial court in this appeal. I would have accepted the said submission of Mr. Banerjee and would have sent the case back on remand with a direction to the appeal court to consider the reasonings of the trial court and also the materials on record in their proper perspective and to decide the said case but it appears to me that the onus which lay on the defendants to prove the surrender of tenancy had not been discharged by them. In such circumstances, no useful purpose will be served by sending the case back on remand. In these circumstances, this appeal is allowed and the judgment and decree of the Court of appeal below are set aside and the judgment and decree passed by the trial court are affirmed. There will be no order as to costs, Let the records, if called for, be sent down as expeditiously as possible.