
(2006) 09 GAU CK 0043
In the Gauhati High Court

Keshab Kalita and Others

APPELLANT

Vs

Thanu Ram Kalita and Others

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 41

Citation : (2007) 1 GLR 556 : (2008) GLT 313 Supp

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—Having been suffered with a decree passed by the learned trial court in T.S. No. 1/96 and having lost in the first appellate court in T.A. No. 2/98, the defendants/appellants has filed this Second Appeal.

2. I have heard Mr H. Deka, learned Senior counsel for the appellants/defendants and Mr. A. M. Buzarbarua, learned Counsel for the plaintiffs/respondents.

3. The plaintiffs/respondents instituted the T.S. No. 1/96 in the Court of the learned Civil Judge (Jr. Division) No. 1, Mangaldoi against the appellants/defendants praying for a decree for declaration of the plaintiffs title and possession over the land under Schedule Ka (2) and Kha (2) land, recovery of khas possession of the Schedule Ka (2) and Kha (2) land by evicting the defendants therefrom and for permanent injunction with other reliefs.

4. In order to get the aforesaid decree the plaintiffs in their plaint, inter alia, pleaded that they are the owners in possession in respect of the schedule land and on 28.8.1990 and 15.9.1990 the defendants dispossessed them from the suit land and having failed to recover possession thereof they have taken recourse to law by filing the suit.

5. The defendants contested the suit by filing written statement and denied the

allegation made by the plaintiffs. The defendants in their written statement pleaded that the suit land is the ancestral property and the defendants have got share of the same and as such the plaintiff does not have any right, title and interest over the same. They have also pleaded adverse possession over the suit land.

6. On the basis of the pleading, the learned trial court framed as many as seven issues and out of which the issue No. 5 is - Whether the plaintiffs have right, title and possession over the suit land ? And issue No. 6 is - Whether the defendants are in possession of suit land adversely for more than 12 years ?

7. During the course of trial both the parties adduced oral and documentary evidence and at the conclusion of the trial, the learned trial court answering the issues in favour of the plaintiffs decreed the suit vide judgment and order dated 16.12.1997. The said decree was carried into an appeal, being T.A. No. 2/98 and the learned appellate court independently considering the materials on record dismissed the appeal. Hence this Second Appeal.

8. This appeal was admitted to be heard on the following substantial question of law.

Whether the finding of the learned courts below as regards possession of the plaintiffs are perverse for non-consideration/misleading of evidence on record ?

9. The learned trial court while considering the related Issue No. 5 regarding the right, title and possession of the plaintiff over the suit land considered the Ext.1 which is the Periodic Khiraj Patta No. 76 pertaining to issue standing in the name of the plaintiffs. The learned trial court also considered the Ext. 4 which is the Periodic Khiraj Patta No. 1.33 pertaining to the land under the other schedules in the name of the plaintiffs. Similarly, the Ext. 2 pertains to Jamabandi of Periodic Khiraj Patta No. 133 and Ext. 3 series are the land revenue paying receipts in the name of the plaintiff No. 1 in respect of the disputed land. The learned trial court also took note of Ext. 5 which is Jamabandi in respect of K.P. Patta No. 76 and found that in all these title documents the name of the plaintiff is duly recorded as Pattadar. Although the defendants claimed the suit property to be ancestral one, but no such documentary evidence in support of their claim could be produced. The learned trial court also considered the statement of the witnesses including DW 2, DW 3, and DW 5 and upon such consideration of the materials and documents proved in the suit came to a definite finding that the suit land pertains to K.P. Patta No. 76 and K.P. Patta No. 133 containing the name of the plaintiff. On such consideration of documentary evidence vis-a-vis oral evidence, the learned trial court decided the related issue in favour of the plaintiffs.

10. The learned appellate court in considering that aspect of the matter has considered the documentary evidence adduced by the parties. It is true that the learned appellate court has not specifically mentioned about the oral evidence adduced by the defendants. Nonetheless the learned trial court came to the finding that on the face of the proof of title by the plaintiffs in respect of the suit

land by producing Periodic Patta and Jamabandi in respect of suit land described in the schedule which has been accepted by the learned appellate court and held that the plaintiffs could prove their title.

11. Mr. H. Deka, learned senior counsel has strenuously submitted that due to non consideration of the oral evidence adduced by the defendants in support of their claim, the impugned judgment and decree is vitiated. In support of his contention Mr. Deka has relied on the decision of the Apex Court in *Yadarao Dajiba Shrawane (dead) by Lrs. Vs. Nanilal Harakchand Shah (dead) and Others*, and in *Rattan Dev v. Pasam Devi* reported in (2002) 7 SGC 441 and submits that such non consideration of materials evidence raise a substantial question of law within the meaning of Section 100 of the CPC. There is no dispute regarding the proposition of law laid down in the above referred cases. But in the instant case what is seen from the record that the defendant has adduced oral evidence which goes contrary to the documentary evidence of title produced by the plaintiff. Periodic Pattas in respect of the suit land, have been issued by the State Government who is the absolute owner of the landed property in the State. After going through detailed procedure as prescribed under the Assam Land and Revenue Regulations by providing every opportunity to the concerned and interest parties at all material stages and after exhausting such procedure of settlement as laid down under the rules framed under the Assam Land and Revenue Regulations, the Periodic Patta has been issued in the name of the plaintiff. Under the provisions of Section 41(2) a presumption arises regarding the validity of such Pattas unless it is proved to be contrary.

12. In the instant case, the defendants have not set out any counter claim claiming title in their favour, they basically denied the title of the plaintiff and the plaintiff by adducing necessary evidence, both oral and documentary including the periodic patta, proved their title. The periodic patta issued to a land settlement holder cannot be questioned fanatically or collaterally without specific challenge in appropriate proceeding which is lacking in the instant case. So long the patta exists relating to the suit land, the title goes in favour of the plaintiff, the defendants though tried to set up a title on their shoulder by adducing oral evidence, the said oral evidence cannot be out way the documentary evidence as produced by the plaintiff to nullify their claim. That apart such plea of title has not taken in their written statement alleging them to set up an un pleaded case.

13. Accordingly, the learned court below in deciding the title in favour of the plaintiff has not committed any error of law justifying reversal of such concurring findings of fact at this second appellate stage.

14. In view of the aforesaid discussion, the substantial question of law so framed in the appeal is answered in favour of the plaintiff and against the defendants/appellants, and the appeal is dismissed with a cost of Rs. 1,000.

15. The interim order passed by this court on 19.5.1999 in Misc. Case No. 79/99 stands vacated.