(2008) 03 GAU CK 0018

In the Gauhati High Court

Khanindra Hazarka APPELLANT

Vs

Rekha Sakia and Others RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Limitation Act, 1963 — Section 15, 26, 27

Citation : (2008) 3 GLT 339

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The challenge made in this writ petition is the judgment and order of the Revenue Board reversing the order of the Revenue Authorities allowing mutation in favour of the petitioner.

2. According to the petitioner, his father Late Dimbeswar Hazarika had been in possession of the land in question. After the demise of his father, the petitioner is in possession of the land. Such possession is stated to be from 1935 continuously and without any interruption. It is the case of the petitioner that he has acquired right, title and interest over the land by way of adverse possession and by operation of Section 27 of the Indian Mutation Act. The petitioner has constructed residential house over the plot of land which is also bounded by brick walls. The petitioner has been paying dues like land revenue, municipal taxes, electricity charge etc. to the authorities.

3. The private respondents herein are the heirs of Late Nabin Saikia, who died interested on 19.3.1999. Late Nabin Saikia, Late Hem Chandra Saikia and Sri Surendra Nath Saikia were brothers and co-sharers of the plot of land. Their father was Late Holiram Saikia. The husband of the respondent No. 1 and the father of the respondents No. 2 to 6 Late Nabin Saikia instituted Title Suit No. 4/1956 as plaintiffs against the father of the writ petitioner Late Dimbeswar Hazarika for declaration of right, title and interest over the suit land. In the

meantime, the father of the petitioner applied for mutation of the suit land in his name vide Mutation Case No. 51/1955-56.

4. The aforesaid title suit was contested by the father of the petitioner claiming adverse possession over the land and also on the ground of the suit being barred by limitation. The title suit was dismissed on withdrawal towards which late Nabin Saikia filed application in 1963 with liberty to file a fresh suit, if so advised. The prayer was allowed by order dated 27.3.1963. It is the case of the petitioner that the right, title and interest of the co-sharers Late Hem Chandra Saikia and Late Surendra Nath Saikia got extinguished and merged with their brother Late Nabin Saikia. In other words the order dated 27.3.1963 binds the other two brothers as well.

5. After the withdrawal of the title suit, no fresh suit was filed. However, one Lakhi Prasad Lahkar claiming to have purchased part of the land in question from the pattadar Nabin Saikia filed Title Suit No. 51/1971 for permanent injunction over 2 kathas of the land out of the total land. The suit was dismissed on contest on 23.6.1977. Being aggrieved, Title Appeal No. 21/1977 was preferred, which was also dismissed on 16.6.1980. Thereafter, said Lakhi Prasad Lahkar filed Title Suit No. 6/1985 in respect of the aforesaid two kathas of land, which was also dismissed on ground of being barred by res-judicata.

6. In the year 2002, to be precise on 14.8.2002, the petitioner filed an application before the revenue authority for mutation of his name in respect of the land in question. The application was registered and numbered as Mutation Case No. 176/2002-03 in the Court of the Circle Officer, Tezpur. The Circle Officer by his order dated 8.7.2003 (Annexure-E) granted the mutation in favour of the petitioner. Being aggrieved the respondents preferred appeal before the Deputy Commissioner. Sonitpur being R.A. No. 2/2003. The appeal was also dismissed by order dated 27.1.2004 upholding the order passed by the Additional Deputy Commissioner, Sonitpur, Tezpur. Thereafter, the respondents preferred appeal before the Assam Board of Revenue being 33 RA(SR) 2005. The appeal has been allowed by the impugned judgment and order dated 28.9.2006, interalia providing that while the possession of the petitioner over the land in question will continue until the same is otherwise decided by the competent Civil Court, in the event of approach being made by either parties. Hence this writ petition.

7. While it is the case of the petitioner that in view of long possession of the land, he has acquired the right, title and interest by way of adverse possession and that any suit by the respondents is barred by limitation, it is the case of the respondents that the revenue authority is not competent to make any declaration relating to adverse possession and/or relating to the principles involved in civil matters.

8. I have heard Mr. A.C. Buragohain, learned Counsel for the petitioner alogwith Mr. D. Bora, learned Advocate. I have also heard Mr. J.K. Baishya alongwith Mr. M. Islam, learned Counsel representing the respondents No. 2 to 6. Ms. R.

Chakraborty, learned Additional Sr. Govt. Advocate represented the State of Assam.

9. Regulation 6(c) of the Assam Land & Revenue Regulations, 1886 deals with rights, which may be acquired over the land. No right of any description shall be deemed to have been, or shall be, acquired by any person over any land except amongst others, rights acquired u/s 26 and 27 of the Indian Limitation Act. Regulation 8 of the Regulations deals with status of land holder how acquired. Any person who has, before the commencement of the Regulations, held immediately under the Government for 10 years continuously any land not included either in a permanently settled estate and/or any revenue free estate who has during that period paid to the Government revenue due thereon, or held the same under an expressed exemption from revenue, except as provided by Section 15, any person who has whether before or after commencement of the Regulations, acquire any such land in a lease granted by behalf of the Government the terms of which is not less than 10 years, shall be deemed to have acquired the status of a landholder in respect of the land.

10. Upon a reference to the aforesaid provisions, it is the submission of the learned Counsel for the petitioner that the petitioner has acquired the status of landholder. Further, upon a reference to schedule to the Limitation Act (Entry 65), it is the case of the petitioner that since the claim of the respondents is barred by limitation, the petitioner having had possession of the land adverse to the respondents, there was nothing wrong in mutating his name in respect of the land.

11. Mr. Buragohain has also placed reliance on the decision reported in AIR 1957 Manipur 25 (Nar Bahadur Gurung and Ors. v. Anil Krishna Bhattacharya and Ors.) and the decision reported in Mt. Dukhuni Bibi and Another Vs. Khaliloor Rahman, . He has also placed reliance on the decision of the Apex Court reported in Bondar Singh and Others Vs. Nihal Singh and Others,

12. In the case of Mt. Dukhuni Bibi (supra) the Court was concerned with the duty of the Settlement Officer to go into the question of possession. It was held that the possession is one of the grounds in which mutation can be allowed subject to there being a "prima facie" title. It was observed that it is on the basis of the title and possession that the mutation can be allowed and not otherwise. It was also observed that the party who is not found to be in possession but claims only right to possession should be referred to the civil Court. This case is of no help to the case of the petitioner. The Assam Board of Revenue by its impugned judgment, while not disturbing possession of the petitioner over the land in question has granted liberty to both the parties to approach civil Court relating to their respective claim over the land.

13. In the case of Nar Bahadur Gurung (supra), upon a reference to the provisions of the Assam Land & Revenue Regulations, it was observed that the Regulation does not give a person possession the right to get settlement. The

settlement can be offered to the possessor only when authority is satisfied on certain points. That clearly means that the person in possession has merely a chance and nothing more of obtaining settlement, but that is not something as right. This case is also of no help to the case of the petitioner.

14. In Bondar Singh (supra), the Apex Court had the occasion to deal with the civil proceeding relating to adverse possession. This case has been relied upon to emphasize on the point of adverse possession. It was the civil Court, which decided the question relating to adverse possession. In the instant case, it is the revenue Court which has decided the issue. Having regard the facts and circumstances involved, this case is also no help to the case of the petitioner.

15. There is no dispute that before the order permitting the mutation in the name of the petitioner, the names of the respondents were there in the revenue records. According to the respondents, the petitioner is in permissive possession of the land and he has not acquired the status of landlord. As to whether the petitioner has acquired the right, title and interest over the land by way of adverse possession is a matter to be decided by the civil Court. The revenue Court cannot assume jurisdiction of civil Court. In Harimati Das (supra), the Division Bench of this Court, upon a reference to the relevant provisions of the Regulations, held that the Assistant Settlement Officer, Settlement Officer and the Board of Revenue have the power to consider possession and the possession alone can be determined. When the issue with the title arises, the said authorities have no jurisdiction to decide such an issue and the parties have to be referred to the civil Court. This is what exactly the Assam Board of Revenue has done by its impugned judgment and order.

16. The results of the aforementioned Title Suit cannot establish the right, title and interest of the petitioner over the land in question. The Title Suit involving the respondents, was not decided on merit and secondly, the Title Suit involving another person i.e. Lakhi Prasad Lahkar cannot bind the respondents in any case. The said Title Suit cannot be decisive of right, title and interest over the land in question and the same also cannot be decided by the revenue authorities.

17. At the instance, the Circle Officer passed the order dated 8.7.2003 (Annexure-3 to the writ petition) allowing mutation in the name of the petitioner. The order was passed primarily upon a reference to the aforesaid Title Suits and also on the basis of the possession of the petitioner over the land. The appellate authority also while upholding the order of mutation by his order dated 27.1.2004 (Annexure- ''F'' to the writ petition) referred to the Title Suits and so also, the provisions of the Assam Land & Revenue Regulations and Section 27 of the Indian Limitation Act. He acted as a civil Court to decide the issue of right, title and interest of the parties.

18. The Assam Board of Revenue by its impugned judgment and order dated 28.9.2006 (Annexure - ''G'' to the writ petition) has exclusively dealt with the matter and upon setting aside the order appealed against, rightly observed that

the title by way of adverse possession can be conferred only by the competent civil Court and not by revenue Court. Provision has been made in the impugned order that the possession of the petitioner over the land in question will continue unless and untill it is otherwise decided by a competent civil Court. Liberty has also been granted to the petitioner to approach appropriate civil Court for declaration of right, title and interest over the land in his favour by way of adverse possession. Liberty has also been granted to the respondents to approach civil Court for declaration of right, title and interest and recovery of possession as per the provisions of the Assam Land & Revenue Regulations.

19. I do not find any infirmity in the impugned judgment and order of the Revenue Board. It has rightly been held that for a decision and/or confirmation of right, title and interest by way of adverse possession, it is only the civil Court, which is competent to decide the issue and not the revenue Court. Till such time, a valid title is countered on the petitioner, which he may obtain through a decree of the civil Court. It will be inappropriate to delete the name of the respondents from the revenue records in respect of the land in question. The revenue Court is not within. its competence and jurisdiction to decide the issue relating to adverse possession and the effect of the provisions of Section 27 of the Limitation Act, which provides that at the determination of the period of limit as per the provisions of the Act to any person for instituting a suit for possession of any property, his right to such property shall get extinguished.

20. Various attending facts and circumstances will have to be addressed to before any declaration of right, title and interest over a plot of land by way of adverse possession and/or extinction of right to file a suit for right, title and interest. The power to decide such issue is vested on the civil Court and the revenue Court cannot usurp the power and jurisdiction of civil Court in the manner and method, in which the same has been done in the instant case. The effect of orders passed by the revenue authorities is virtually the declaration of right, title and interest of the petitioner over the land by way of adverse possession, which in my considered view, is wholly without jurisdiction.

I or all the aforesaid reasons, I am of the considered opinion that no interference is called for to the impugned judgment and order dated 28.9.2006 passed by the Assam Board of Revenue in Case No. 33RA (Assam) 2004. Consequently, the writ petition is dismissed. There shall be no order as to costs.

