
(2015) 04 GAU CK 0056
In the Gauhati High Court
Case No : Regular First Appeal No. 17 of 2004

Kitply Industries Ltd.

APPELLANT

Vs

Coal India Ltd. and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Coal Mines (Nationalisation) Act, 1973 — Section 2(h), 3
Limitation Act, 1963 — Section 3(1)

Citation : (2015) 04 GAU CK 0056

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Advocate : G. Rahul, for the Appellant; M.Z. Ahmed and A.M. Dutta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Nishitendu Chaudhury, J—Judgment and order dated 11.9.2003 passed by the learned Civil Judge, (Senior Division) Tinsukia in Title Suit No. 25 of 1986 has been called in question in the present first appeal. By that judgment, the learned trial court dismissed the suit of the plaintiff in entirety.

2. Present appellant as plaintiff instituted Title Suit No. 25 of 1986 in the Court of learned Assistant District Judge (as designated at that time) at Tinsukia stating that the plaintiff company was initially known as Assam Railway and Trading Company Ltd. incorporated in the United Kingdom having its principal place of business at Margherita town in the erstwhile district of Dibrugarh. The company owned coal mines, brick field, bamboo garden, Saw Mills and wood preservation plants etc at Margherita and it also owned several buildings and structures used as residences of its officers and employees working under the company. Some of these buildings are used for hospital, workshop, schools, club etc. Defendant No. 2, Union of India by promulgating an ordinance in 1973 took over management of the coal mines belonging to the plaintiff company and started managing and

controlling the same w.e.f. 31.1.1973. A custodian was appointed under the ordinance for taking over the property into possession and accordingly the former Assam Railway and Trading Company Ltd. ceased to have any control and management of the affairs thereof. Subsequently, Coal Mines Nationalization Act, 1973 was passed and brought into effect from 1.5.1973 repealing the ordinance. The defendant No. 2 thereafter constituted defendant No. 1, Government Company under the name and style of Coal Mines Ltd. and custodian appointed under the ordinance was thereby replaced. It is further stated that the earlier the name of Assam Railway Trading Company Ltd. was subsequently renamed as A.R. & T. India Ltd. w.e.f. 31.7.1981 and it was again renamed as Art Plywood Industry Ltd. w.e.f. 1.5.1982. The plaintiff claimed that apart from mining business, it has timber, bricks fields, bamboo plantation, trading and holding of various immovable properties at Margherita town and neighboring areas wherefrom it was collecting rents and profits. Even defendant No. 1 by letter dated 2.6.1979 and 11.6.1979 admitted that land measuring about 111 bighas 2 katha 4 lechas to the south of the river Dihing do not belong to defendant No. 1 and that another plot of land measuring 19 bighas 4 kathas 12 lechas belonging to the Government was also under the possession of the plaintiff. According to the plaintiff it has several bungalows over this plot of land which were marked M/2, M/3, M/4, M/5, M/12, M/246, M/249, M/253, M/254 and O/14. But on 7.11.1981 a senior counsel on behalf of defendant No. 1 issued notice on 7.11.1981 claiming that land measuring 100 bighas 2 kathas 4 lechas of land referred to above and the bungalows standing thereon also stood vested in the defendant No. 1 consequent to nationalization. The defendant No. 1 also approached the Additional Deputy Commissioner for mutation of the aforesaid property in their names vide Mutation Case No. DGKG 56/82 and the same was pending. It is the case of the plaintiff that defendants never acquired the properties described in the schedule?A to schedule-E of the plaint and that plaintiff is entitled to the decree of declaration for right, title and interest over the same land and confirmation of possession with respect to Schedule-A and recovery of possession with respect to Schedule-E and Schedule-D.

3. Defendants submitted written statement denying the case of the plaintiff in entirety. According to the defendants, letters issued by the officer of defendant No. 1 on 2.6.1979 and 11.6.1979 were forged and that false valuation chart was submitted by plaintiff. It was claimed that letters dated 2.6.1979 and 11.6.1979 could not in any way extinguish vested right of the defendants with respect to the suit property. The defendants specifically denied the averments made in the plaint that suit properties were used or enjoyed for any other purpose other than mining. According to the defendants, at the time of nationalization of coal mines, the plaintiff was engaged in mining and selling of coal and also manufactured timber products at Margherita, Assam. The establishments at Margherita were for directing controlling and also to provide support and services to the Colliery and timber division like main office, central workshop, storage/garage, central hospital, workmen quarters, officers' bungalow, vacant and occupied land etc.

Those were on the south bank of the river Dihing whereas on the north bank of Dihing there was timber mill, hospital, workmen quarter etc. According to the defendants on or about 31.1.1973 with the issuance of the ordinance, all Collieries were taken over by Government and the same vested in the Central Government. Subsequently, after enactment of Coal Mines Nationalization Act, 1973 all rights, title and interest of the owner in relation to coal mines stood transferred and vested absolutely on the central Government free from all encumbrances. By virtue of Section 2(h) of Coal Mines Nationalization Act, 1973 all properties originally owned by plaintiff stood transferred to the central Government and then to the defendant No. 1. Defendants further disclosed that the same plaintiff had instituted two Writ Petitions before the Calcutta High Court vide CR. No. 5800(W)/1980 and C.R. No. 12587(W)/1981 claiming right, title and interest over almost the same property but did not make mention of the same in the plaint. The suit, therefore, was liable to be dismissed.

4. Upon such rival contention of the parties, the learned trial court has framed as many as 14 issues and two additional issued which are quoted below:

- (1) Whether the suit is maintainable?
- (2) Whether there is cause of action?
- (3) Whether the plaintiff has right to sue?
- (4) Whether Assam Railways and Trading Company Ltd. owned and possessed the landed properties as mentioned in Schedule Nos. A to E of the plaint as absolute lawful owner, for its different business purpose, prior to the taking over of the same as per Coal Mines (Taking over of management) Ordinance, 1973?
- (5) Whether the plaintiff is the absolute lawful owner of the entire lands of periodic patta Nos. 1 and 5 and special periodic patta No. 1 of Margherita Town, together with the houses thereon and possessed the same for purposes other than mine, as stated in the plaint? If so, whether the defendants acquired any right, title and interest over such lands and houses by virtue of the provisions of the Coal Mines (Nationalization) Act, 1973?
- (6) Whether the defendants admitted by letters dtd. 2.6.1979 and 11.6.1979 that the land measuring 111 Bighas 2 kathas 4 lessas including some Sarkari land measuring 19 Bighas 4 kathas 12 lessas together with the bungalows standing thereon belonged to the plaintiff?
- (7) Whether the plaintiff is entitled to declaration of right, title and interest and for confirmation of possession of the properties of Schedule-A of the plaint?
- (8) Whether the plaintiff is entitled to decree for declaration of right, title and interest of the property mentioned in Schedule-B of the plaint?
- (9) Whether the plaintiff is entitled to decree for declaration of right, title and interest and for khas possession of the properties described in Schedule-B and D of the plaint?

(10) Whether the plaintiff is entitled to permanent injunction in respect of properties of Schedule A, B, D and E restraining the defendants from interfering with the plaintiff's possession and exercise of right of possession over such properties, as claimed?

(11) Whether the defendants are liable to render full accounts of collection of rents and profits out of the properties of Schedule-B, D and E of the plaint as claimed?

(12) Whether the plaintiff is entitled to mesne profits for the properties of which possession was taken by the defendants wrongly, as stated in the plaint? If so, to what amount?

(13) Whether the defendants are entitled to compensatory costs claimed?

(14) To what relief or reliefs, the parties are entitled?

Addl. Issues

(I) Whether there is any Writ petition pending before the Hon''ble High Court of Calcutta numbering C.R. 5800(W) of 1980 and C.R. 12578(W) of 1981 claiming Writ in the nature of mandamus against the defendants where the matters-in-issues are directly and substantially the same with the issues involved in the present suit?

(II) Whether the suit is required to be stayed in view of the pendency of Writ Petitions before the Hon''ble High Court of Calcutta being C.R. 5800(W) of 1980 and C.R. 12578(W) of 1981 U/s. 10 of the C.P.C.?

5. In course of trial, plaintiff examined six witnesses and examined documents whereas defendants examined one witness and exhibited documents. After consideration of these materials available on record and after hearing oral argument of the parties, learned trial court passed impugned judgment and decree dated 11.9.2003 holding the additional issues as redundant in view of the fact that the writ petitions in the meantime have been dismissed by the Calcutta High Court. The issues No. 5, 6, 7, 8 and 9 referred to above were decided in the negative and against the plaintiff and consequently remaining issues were decided against the plaintiff holding that the plaintiff was not entitled to any relief. It is this judgment which has been brought into challenge in the present appeal.

6. I have heard Mr. G. Rahul, learned counsel for the appellant and Mr. M.Z. Ahmed, learned senior counsel assisted by Mr. A.M. Dutta for the respondents.

7. Mr. G. Rahul submits that findings of the learned trial court in regard to the nature and character of the business of the company is not based on the materials on records. The plaintiff company had other business apart from mining business. It had landed property and let out the same to tenants for the purpose of collecting rents. These properties do not have any nexus with the mining business and so finding of the learned trial court that the same were

incidental to mining business is not correct. According to him, the plaintiff had business of timber, bricks and bamboo plantation. But since defendants took over all records of all the business, plaintiff was incapable to produce any documentary proof of those business and so apart from oral evidence of the witnesses nothing else could be produced by plaintiff in course of trial. In this regard, he referred to deposition of PW-1 who stated on oath that records of all the business of the plaintiff were taken over by defendants in the year 1973 itself.

8. Per contra, Mr. Ahmed, learned senior counsel for the respondents would argue that properties of the owner of the mines automatically vested in the central Government w.e.f. 1.5.1973 after Coal Mines Nationalization Act, 1973 came into effect. He stated that possession was immediately taken over by plaintiff in 1973 and even rents were collected by them. He drew attention of the court to the oral evidence of DW-1 in this regard. Defendant No. 1 Arbind Kumar was originally an Executive of the plaintiff company. He joined the plaintiff company in 1972 and after nationalization of the mines, he continued working under the defendants. He came to the witness box and stated that other properties referred to in the plaint were also used for purpose incidental to mining. He stated that area where the suit property is situated was very backward one without having any facility. Under such circumstance, keeping in mind the benefit of the employees, it was necessary to establish cinema hall, a branch of the bank and a bus stand. It is for this purpose, lands were let out. He stated in specific terms that the basic purpose of letting out the property was for the benefit of the employees engaged in mining. Although this witness was thoroughly cross-examined on several dates but on perusal of the same it does not appear that he could be successfully contradicted on relevant points. This defendant No. 1 being initially an employee of the plaintiff company was also engaged in assisting the custodian of the property after the ordinance was issued for taking over management. He continued in the service even thereafter when defendant No. 1 was constituted and so he has seen all the developments in his own eyes. When this witness says that the properties mentioned in the schedule to the plaint were actually used for incidental purpose of mining and there is no effective cross-examination on that count, the deposition of this witness cannot be ignored. The learned trial court has thoroughly considered the evidence including the exhibits. No documents could be produced before the learned trial court by plaintiff to show that apart from mining business, it had any other individual business and that such business did not have any nexus with the mining operation. Under such circumstance, learned trial court considered the provision under Section 2(h) of the Coal Mines Nationalization Act, 1973 and held that the suit properties were used for the purpose of mining operation and so once coal mines stood nationalized, the same vested on the central Government w.e.f. 1.6.1973. Mere oral evidence of the PW-1 cannot wipe out the effect of Section 2(h) of the Coal Mines Nationalization Act, 1973. Coming to the question of certificates Exhibits No. 1 and 2 issued by Estate officers, it is to be noted that none of these officers have not been examined by the plaintiff. In the written

statement, defendants took a specific stand that these certificates are forged. Under such fact situation, plaintiff was duty bound to examine the persons who had issued the certificates to show that they were actually issued and that contents thereof are correct. Issuance of a letter by an officer of the defendant No. 1 may be correct but contents thereon has to be proved in accordance with law. As observed above, suit property was vested on the central Government w.e.f. 1.5.1973 and thereafter on the defendant No. 1 after the same was constituted. Defendant No. 1 is a Government Ltd. Company. Now the property belonging to the Central Government or the defendant No. 1 can be transferred or conveyed by recognized procedure of transfer of property. It is not the case of the plaintiff that the aforesaid estate officer had any authority to transfer the same in favour of the plaintiff or that actually such a transfer had taken place. I have gone through Exhibits 1 and 2 which merely shows that in the opinion of issuer, lands described in the said certificates do not belong to defendant No. 1. Coal India Ltd. Obviously estate officer is not the person authorized to transfer the land of the Coal India Ltd. Had they been produced by plaintiff before the court, the defendants would have been in a position to cross-examine them to find out as to whether such certificates were at all issued by them. Issuance of such certificates or ownership certificate issued by Estate Officer does not appear to be an act in discharge of official duty of an estate officer and so Exhibit-1 and 2 cannot be said to have been issued in regular discharge of the official duty. This being the position, it was still more necessary on the part of the plaintiff to examine the said witness. The learned trial court has considered these exhibits and held that estate officer did not have any authority to issue the Exhibits-1 and 2 and even if such certificates were issued, they cannot result in conveyance of title. Having gone through exhibits-1 and 2 and the deposition of the witnesses of both sides, I do not find any reason to take a different view then than the one that has been taken by the learned trial court in regard to legality and validity of Exhibits-1 and 2. Once exhibits-1 and 2 are taken off from consideration, the plaintiff does not have any other documentary evidence in its favour to stake claim of right, title and interest to the properties.

9. Now from perusal of the plaint it appears that even according to the plaintiff defendants illegally took possession of the suit property including brick field in the year 1973. Suit having been instituted in the year 1986 such a claim is prima facie barred by limitation. So, claim of the plaintiff in regard to brick field and brick business is an abandoned claim in view of bar of limitation. True, defendants did not raise any objection in regard to limitation but under Section 3(1) of the Limitation Act, it is the duty of the learned court to see as to whether on the basis of the pleadings made in the plaint of application is really time barred. A suit can be dismissed at the threshold even in the absence of objection by defendants on the point of limitation if it appears on bare perusal of the plaint that the same is barred by limitation. Here plaintiff itself having stated that defendants illegally took over possession of the brick field in the year 1973 in para-21 of the plaint in that event plaintiff is estopped from claiming right, title

and interest to such property by instituting a suit in 1986. In para-25 of the plaint, plaintiff stated that cause of action arose on 7.11.1981, 31.8.1983 and 31.10.1984. But from perusal of the plaint and the deposition of the witnesses of the plaintiff it is not understood as to how cause of action can arise on these dates. Admittedly, possession of the property was taken on or about 10.3.1973. Moreover, vide Exhibit-A, the officers of the plaintiff company requested defendant No. 1 to permit them as permissive occupier of the bungalows. The learned trial court has noticed this aspect of the matter as well. If the plaintiff or its employee wants to be permissive occupier under the defendants then the claim of title by plaintiff becomes automatically weakened. This coupled with the evidence given by DW-1 in regard to obtaining possession of the property shows that plaintiff could not discharge its burden of proving acquisition of right and properties at all. Learned trial court after consideration of the evidence on record has arrived at the findings that the suit properties were owned by plaintiff prior to nationalization and so under Section 2(h) read with Clause-(Xii) thereof, same automatically stood transferred to the central Government being properties of the owner of the mines. A different opinion could have been arrived at had the plaintiff brought some valid evidence on records to show that properties in question had no nexus with the mining business. In this regard, the learned trial court had also considered the law laid down by the Hon"ble Supreme Court in the case of D. Venkata Reddy Vs. R. Sultan and Others, AIR 1976 SC 1599 : (1976) 2 SCC 455 : (1976) 3 SCR 445 . Para-27, 28 and 29 of the aforesaid judgment were in regard to interpretation of Section-3 of Coal Mines Nationalization Act, 1973. Here the Hon"ble Supreme Court held that all properties belonging to the mines whatever be the nature of the properties stood transferred to the central Government because of omnibus provision of section-2(h) Clause(Xii) of the Coal Mines Nationalization Act, 1973. In the case in hand, the suit properties belonged to the owner and were used for proper functioning of the mines. This being the position, the learned trial court was of the considered view that as per the legislative intent suit property stood vested in the central Government w.e.f. 1.5.1973.

10. I have considered the evidence of PWs-1 to 6 as well as DW-1. I have also considered the exhibits adduced by the parties. The plaintiff claimed that suit properties were different from the ones engaged for mining operation. It is the basic case of the plaintiff that the suit property which were let out to other individuals including UBI, ASTC, Cinema hall and Hotel cannot have any nexus with the mining business and they constituted separate business altogether. Now having so pleaded, the plaintiff did not bring any document regarding the memorandum of association of the company to show as to whether it had any other business than the mining operation. The plaintiff has also failed to produce any books of account of those business for whatever the reasons may be. If it is the case of the plaintiff that the documents were taken over by the defendants, the plaintiff was at liberty to call for the records from the defendants by filing appropriate applications. Having gone through the order sheets, I do not come

across any reference to that effect. Mr. G. Rahul also failed to point out as to whether any such application was filed by the plaintiff calling for documents from the defendants. Under such circumstances, it is not possible to presume without any documentary proof that the suit properties were not related to the mining operation of the plaintiff. On the other hand DW who is a former executive of the plaintiff deposed on oath claiming that all those exercises were necessary for furthering the prospect of mining business. Besides, the preamble of the Act itself made clear that the Act would apply not only to the mines but also for those purpose which are incidental thereto. In the absence of any valid and cogent evidence in support of the claims of the plaintiff, the learned trial court has not committed any error in holding that the suit properties were also used for facilitating mining business of the plaintiff.

11. Considering the facts and circumstances and after perusal of the evidence, I do not find any materials to differ from the view taken by the learned trial court. The appeal is devoid of any merit and it is accordingly dismissed. No order as to cost.

12. Send down the records after preparation of the decree.