
(2002) 05 GAU CK 0029

In the Gauhati High Court

Case No : Regular Second Appeal No. 56 of 1999

Lakhan Ch. Roy and Another

APPELLANT

Vs

Kewelpati Devi

RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:

Assam Non-Agricultural Urban Areas Tenancy Act, 1955 — Section 3, 5, 6
Criminal Procedure Code, 1973 (CrPC) — Section 107
Limitation Act, 1963 — Article 65

Citation : (2002) 2 GLT 221

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : A. Dasgupta, for the Appellant; T.C. Khetri, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Aggrieved by the judgment and decree, dated 6.4.99, passed by the learned Additional District Judge, Sonitpur, Tezpur, in TA No. 4 of 1997, reversing the judgment and decree, dated 11.11.97, passed by the learned Civil Judge, (Sr. Division), Sonitpur, Tezpur, in TS No. 14 of 1992, and thereby decreeing the suit, the Defendant-Appellants have preferred this Second Appeal. The appeal was admitted for hearing on the following two Questions as substantial questions of law:

(1) Whether Ext. 1 (Bichar) can extinguish the period of limitation as envisaged under Article 65 of the Limitation Act, 1963?

(2) Whether the protection u/s 5 and benefit of Section 6 of the Assam Non Agricultural Urban Areas Tenancy Act is applicable in the instant case?

2. The case of the Respondent-Plaintiff as unfolded, from the records, may, in brief, be stated thus:

The Respondent is sole land-holder, owner and possessor of the suit land. In about 1984, the Defendant-Appellant No. 1, who was landless, approached the

Respondent-Plaintiff with request to allow him to erect a thatched house on the suit land. The Respondent allowed the Appellant No. 1 to construct a thatched house as requested for by him and to let him live there for a few months, but the Appellant No. 1, after living there for about three months, started constructing Anr. thatched house without permission from the Respondent. Though the Respondent raised objection thereto, the Appellant continued with the construction. The Respondent, then, approached the authorities of the Balipara Gaon Panchayat, whereupon a Bichar (i.e. sitting for settlement of disputes) was held, on 27.12.85, in the office of the said Panchayat, wherein the Appellant No. 1 was also present. It was agreed in the said Bichar that the Appellants would be allowed to live on the said suit land for a further period of two years and that after 31.12.87, the Appellants would hand over vacant possession of the suit land to the Respondent. The Appellants, however, on one pretext or Anr. did not vacate the suit land though they kept on assuring the Respondent that they would soon vacate the same. The Respondent has been paying land revenue regularly in respect of the suit land. The Respondent neither received nor demanded any rent from the Appellants for occupation of the suit land. In order to grab the suit land permanently, the Appellants got a proceeding initiated u/s 107 Code of Criminal Procedure, in Misc case No. 17/91, by claiming that they had been in possession of the suit land for more than 30/40 years. The said Misc Case was, eventually, dropped on 16.12.91. It was during the course of the proceeding in Misc Case No. 17/91 that the Respondent came to learn that the Appellants had illegally and stealthily got the suit land mutated in the name of the Appellant No. 2 in collusion with the revenue authorities of Charduar Revenue Circle. On coming to know of this mischievous design, the Respondent moved an application before the Circle Officer concerned and got the mutation of the suit land standing in the name of Appellant No. 2 cancelled and the original mutation was accordingly restored on 23.10.91. Thereafter, the Appellants started, on 22.6.92, construction of a bath room of a semi-permanent nature with pucca floor on the suit land without permission of the Respondent. The Respondent, therefore, instituted the suit praying, inter alia, for recovery of possession of the suit land by demolishing the structures raised thereon by the Appellants and also for permanent perpetual injunction restraining the Appellants from re-entering the suit land.

3. The Appellants contested the suit by filing written statement wherein it was asserted that about 45 years back, the Appellants had taken possession of the suit land on being allowed by the Respondent's parents to stay on the suit land by constructing houses thereon and that they have been in occupation of the suit land treating the same as their own land. The Respondents title, if any, to the suit land stood extinguished by adverse possession. The Appellants admitted that they never paid any rent to the Respondent. The Appellants admitted that they did get a proceeding u/s 107 Code of Criminal Procedure initiated, which was eventually dropped, and that the mutation, which they had obtained on the plea of adverse possession, was also cancelled. On the strength of their plea of

adverse possession Appellants prayed for dismissing the suit.

4. Altogether following six issues were framed in the suit by the learned trial Court:

1. Whether the suit was not properly valued?

2. Whether the Defendants are in permissive possession or in adverse possession of the suit land?

3. Whether the Defendants on 27.12.85 agreed to hand over the vacant possession of the suit land to the Plaintiff two years after 31.12.87?

4. Whether the Defendant No. 2 with an ill motive get the scheduled land mutated in her name whether the same was later cancelled?

5. Whether the Defendants are illegally constructed one thatched house and a cow shed on the scheduled land and whether on 22.6.92 started construction of a semipermanent structured bath room in the suit land?

6. To what relief of reliefs the parties are entitled to?

5. Both sides adduced oral as well as documentary evidence.

6. In view of its finding that the suit of the Respondent was barred by adverse possession, the learned trial Court dismissed the suit, This finding was, as indicated above, reversed by the first appellate Court on the ground that the Appellants had failed to establish their plea of adverse possession.

7. I have carefully perused the relevant records including the impugned judgment. I have heard Mr. A. Dasgupta, learned Counsel for the Appellants, and Mr. T.C. Khetri, learned Counsel appearing for the Respondent.

8. Coming to the first substantial question of law, it is essential to bear in mind that the Respondent asserted in the plaint that she is the sole land-holder and possessor of the suit land and that the Appellant No. 1 had come to occupy the suit land on being allowed by her as stated hereinabove. This position was substantially admitted by the Appellants in paragraph Nos. 7 and 8 of their written statement inasmuch as the Appellants did not dispute that the suit land, which belonged to the Respondent, came into their occupation on being allowed by the Respondent. The only difference between the assertions of the two contesting parties was that while the Respondent claimed that the Appellants came into occupation of the suit land in or about 1984, the Appellants asserted that they had come into possession of the suit land about 45 years back.

9. Having, thus, admitted Respondent's title to the suit land and having also admitted that they (Appellants) had come into occupation of the suit land with the permission of the parents of the Respondent, it was for the Appellants to show and establish as to when their possession commenced to be hostile to the title of real land-holder, i.e. the Respondent inasmuch as to succeed with the plea of adverse possession, a person must prove three *nec-nec vi, nee, nee clana* and

nee precario. In other words, such a person must show that his possession is adequate in continuity, in publicity and in extent (Reference may be made to (2001) 2 SCC 498 In this regard, not only the pleadings of the Appellants, but also their evidence is silent.

10. To wriggle out of this situation, Mr. Dasgupta has, now, submitted before this Court that the Appellants had got their names mutated in respect of the suit land and since the time of such mutation, Appellants possession of the suit land became adverse to the interest of the Respondent. What is worth emphasising in this regard is that the Appellants have nowhere clarified or indicated as to when they had really got the mutation done. Far from this, admitted position of the parties is that in the year 1991, on coming to know, upon commencement of the proceeding u/s 107, CrPC, about the said mutation, the Respondent applied for cancellation of the said mutation and it was accordingly cancelled on 22.6.92 and thereafter, the suit was filed in the year 1992.

11. Apart from the fact that there is not even an iota of material on records to show that the said mutation was done within the knowledge of the Respondent, Ext.-1, which is the agreement arrived at between the parties on 27.12.85, shows that the Appellants had agreed to vacate the suit land after two years. This agreement goes to show that the plea of adverse possession set up by the Appellants is devoid of any merit inasmuch as in the face of this agreement, the Appellants cannot claim to have remained in continuous adverse possession of the suit land asserting that they owned the land or that the Plaintiff had no title thereto. This apart, there is no evidence on record to show that the Appellants had publicly disowned the title of the Respondent in respect of the suit land.

12. Situated thus, I am firmly of the view that the finding of the learned first appellate Court that the suit was not barred by adverse possession is based on the evidence on records and provisions of law relevant thereto and that Ext.-1, in no way, helps the case of the Appellants. In fact, this question is not really a substantial question of law inasmuch as it required this Court to make an enquiry into the reliability of the evidence on records.

13. Be that as it may, coming to the second substantial question of law framed in this appeal, I find that the Respondent made a categorical statement in paragraph-5 of the plaint that the Respondent neither received nor demanded rent from the Appellants for their occupation of the suit land. While dealing with this assertion, Appellants nowhere claimed in their written statement that they had paid any rent either in cash or in kind to the Respondent.

14. In view of the above, the provisions of the Assam Non Agricultural Tenancy Act cannot come into play inasmuch as Sections 5 and 6 provide protection from eviction to those classes of persons, who are tenants within the meaning of the definition of "tenant" given in Section 3(g), which reads as follows:

3(g) "tenant" means a person who holds land under Anr. person, other than Government and who is, but for a special contract liable to pay rent for that land

to the latter, and includes a person who derives his title from a tenant, and a person who continues in possession of any land after termination of his tenancy in respect of that land.

From a bare reading of Section 3(g), it is crystal clear that the tenant is one, who is, for reasons of special contracts, liable to pay rent to the person under whom he or she holds the land.

15. To a point of query made by this Court, Mr. Dasgupta has grudgingly conceded that there was no special contract making the Appellants liable to pay rent to the Respondent for occupation of the suit land. In the face of such an admission, there can be no escape from the conclusion that the protection given under Sections 5 and 6 of the Act cannot be extended to the Appellants.

16. For the reasons discussed above, both the questions formulated above are answered in the negative.

17. In the result and for the forgoing reasons, this appeal fails and it is dismissed with costs.

18. Let the relevant records be sent back with a copy of this judgment and order to the Courts below.