

(1970) 01 GAU CK 0002
In the Gauhati High Court
Case No : Civil Second Appeal No. 7 of 1961

M/s. New Durgabari Tea Co. Ltd.	Vs	APPELLANT
Smt. Rani Surabala Devi and others		RESPONDENT

Date of Decision : 09-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101

Citation : (1970) 01 GAU CK 0002

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : R.C. Bhattacharjee, for the Appellant; M.K. Dutta, for the Respondent

Final Decision : Allowed

Judgement

R.S. Bindra, J.C.

1. In this second appeal by the defendants, Messrs. New Durgabari Tea Co. Ltd., hereinafter called the Company, the principal question that arises for determination is about the exact scope of the notification issued by the Administrator of the Union Territory of Tripura u/s 134(1) of the Tripura Land Revenue and Land Reforms Act, 1960, hereinafter referred to as the Act.

2. The suit out of which instant appeal has arisen was filed by the plaintiffs on 3-12-1349 Tripura Era, corresponding to 16-3-1940 A.D., for declaration of their title to 8 drones of land, described in Schedule D attached to the plaint, and for possession of the same by eviction of the defendants. Another relief claimed was for mesne profits but we are not concerned with that relief in the present appeal because the trial Court, by its judgment dated 29-8-1957, directed the plaintiffs to institute a separate suit for their recovery and the plaintiffs did not challenge that direction of the trial Court either by taking an appeal against the same or by putting in cross-objections when the defendants filed an appeal against the decree of the trial Court. In substance, the allegations of the plaintiffs set out in the plaint were that out of the lands situate in villages Lengta Durgabarf and

Uttar Rampur, and described in details in schedule A to the plaint, the Maharajah of Tripura settled 23 drones, 5 gandas and 10 dhurs with their ancestor Maharaj Kumar Sib Chandra Deb Barma Bahadur on 29-1-1314 T.E., and that that settlement was comprised only of plain lands which were either under cultivation or were cultivable. In other words, no tilla land was included, according to the plaintiffs, in the settlement made in favour of their ancestor. The rest of the lands mentioned in schedule A were settled on 17-3-1329 T.E. with the Company. This settlement was entirely comprised of tilla lands. The area settled with the plaintiffs' ancestor bears Kayemi Taluka No. 127 and that given to the Company bears Takshishi Taluka No. 66. The Company began to encroach upon the land belonging to the plaintiffs with effect from Ashar or Sravan of 1338 T.E. by planting tea bushes thereon, and that process continued until 22nd of Baisakh, 1349 T.E. by which date a total of 8 drones, described in schedule D to the plaint, had been encroached upon. In para 12 of the plaint it was mentioned that the "particulars regarding the time when the defendant Company began to possess a particular plot out of the lands mentioned in schedule D (Gha) will be submitted later on to the Commissioner at the time of local investigation". In para 16 of the plaint it was stated that "The cause of action of the instant suit has arisen gradually from Asnar or Sravan of 1338 T.E., the date of the defendant Company dispossessing the plaintiffs from the suit land, upto 22nd Baisakh, 1349 T.E., the date of last dispossession."

3. The Company resisted the suit by traversing the allegation of the plaintiffs that the land in dispute forms part of Kayemi Taluka No. 127. In other words, the Company denied the ownership of the plaintiffs to the land claimed by the latter. It was alleged further that the plaint did not disclose any cause of action and that the suit was barred by time, having been instituted more than 12 years after the plaintiffs had been dispossessed.

4. The trial Court settled the following issues between the parties:

(1) Does Taluk No. 127 comprise the suit land?

(2) Have the plaintiffs cause of action?

(3) Is the suit barred by limitation? By his judgment dated 29-8-1957 Shri C Sinha, the Subordinate Judge, Tripura, decided issues Nos. (1) and (2) in favour of the plaintiffs and issue No. (3) against the defendants. In consequence of these findings the suit of the plaintiffs was decreed with costs save the claim relating to mesne profits respecting which, as stated above, the plaintiffs were allowed to file a separate suit.

5. Having felt aggrieved with the judgment and decree of the trial Court, the Company filed an appeal in the Court of District Judge, Tripura, who by his Judgment dated 9-12-60 dismissed the same with costs. In the present appeal filed by the Company on 1-4-1961 the correctness of the judgment and decree made by the District Judge is challenged.

6. After the Act came into force In Tripura a notification u/s 134(1) of the Act was issued by the Administrator, Shri R.C. Bhattacharjee appearing for the Company, submitted in forefront of his arguments that after the Administrator had issued the said notification all the rights the plaintiffs possessed in the suit land became vested in the Government and so the plaintiffs cannot now contend that they are entitled to the possession of the land from the Company. Shri M.K. Dutta, representing the plaintiffs, urged, on the other hand, that until the Collector has issued an order u/s 137 of the Act calling upon the plaintiffs to surrender possession of the land in dispute, the plaintiffs are entitled to remain in possession thereof despite the fact that the land has vested in the Government. Let us examine the relevant provisions of the Act to determine the merits of the respective contention raised by the parties" counsel.

7. Section 134(1) provides that as soon as may be after the commencement of the Act, the Administrator may, by notification in the Official Gazette, declare that, with effect from the date specified in the notification (hereinafter referred to as the vesting date), all estates situated in any area or areas and all rights, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrances. The expression "intermediary" is defined in Sec. 133 of the Act to mean a person who holds In an estate the right, title or interest of a talukdar. The plaintiffs being admittedly talukdars respecting the land in dispute, the Administrator's notification issued u/s 134(1), it was not disputed, applies to them as also to the suit land. In the next Section 135 the consequences of a notification Issued u/s 134(1) are specified. That section states, inter alia, that notwithstanding anything contained in any law for the time being in force or in any agreement or contract, express or implied, with effect from the vesting date, each estate to which the notification relates and all rights, title and interest of intermediaries In such estate shall vest in the Government free from all encumbrances, and that all grants and confirmation of title to the estate and rights therein made in favour of an intermediary shall cease and determine. Clause (f) of Section 135 Is to the effect that all rents and other dues In respect of the estate for any period after the vesting date which, but for the Act, would be payable to an intermediary shall be payable to the Government and any payment made in contravention of this clause shall not be valid discharge by the person liable to pay the same. Clause (g) of the same section provides that where under any agreement or contract made before the vesting date, any rent, cess, local rate or other dues for any period after the vesting date have been paid to or compounded or released by an intermediary, the same shall, notwithstanding such agreement or contract, be recoverable by the Government from the Intermediary, and may, without prejudice to any other mode of recovery, be realised by deduction from the compensation payable to the intermediary. These provisions of the Act leave no room for doubt on the point that with effect from the vesting date the intermediary ceases to have any claim to the estate held by him, and that with effect from that date all rights respecting the estate are enforceable only by the Government to the entire

exclusion of the erstwhile intermediary. It looks plain that the right to evict even the trespassers from over the estate respecting which a notification u/s 134(1) has been issued vests in the Government and not in the quondam intermediary.

8. The conclusion just recorded is reinforced by the provisions of Sections 140 and 141 of Chapter XII of the Act bearing the heading "Assessment and Payment of Compensation". Section 140 states that every intermediary, whose rights, title and interest in any estate vest in the Government under Chapter XI shall be entitled to receive and be paid therefor compensation as provided in the other Sections of the Chapter. Section 141 enacts that the compensation referred to in S. 140 "shall be due as from the vesting date" and the portion remaining unpaid shall carry interest at the rate of 2 1/2% per annum. The underlined (here in " ") words of Section Section make it as plain as a pikestaff that from the vesting date the intermediary ceases to have any connection with the estate save his right against the Government (and not against the estate) for compensation in the manner determined by the provisions of Chapter XII. The Parliament was very fair and equitable to the intermediary by enacting In Section 141 that compensation shall become due to the intermediary from the very date of the vesting order, and that if the Government fails to pay the compensation on that date, it shall carry interest at the rate of 2 1/2 per cent per annum until payment. The rights of the intermediary and of the Government were very precisely defined by the provisions of the Act, just reproduced, leaving no scope for doubt or dispute, the intermediary left with no right of any variety in the estate from the vesting date save the right to compensation due to him from the Government, and all rights respecting that estate accruing to the Government from that date subject, of course, to its liability to pay compensation to the intermediary. However, irrespective of the fact whether compensation is paid on the vesting date or subsequently, or, to take the extreme case, not paid at all, the intermediary can exercise no right known to law respecting the estate which has vested in the Government.

9. Shri M.K. Dutta placed reliance on Section 137 of the Act to support his submission that until an order is served on the plaintiffs by the Collector to surrender possession of the land in dispute, the plaintiffs can hold the land and can also take steps for eviction of the trespassers on the land. I regret my inability to accept that contention. Sub-section (1) of S. 137 enacts that the Collector shall take charge of estates and interests of intermediaries which vest in the Government u/s 135, while sub-section (2) of that section enacts that for the purpose aforesaid, the Collector may, by written order served in the prescribed manner, require any intermediary or other person In possession of any such estate or interest to give up such possession by a date to be specified in the order. It follows that the Collector is bound to take charge of the estates and interests of intermediaries immediately they vest in the Government, and that it is he, and not the erstwhile intermediaries, who is to take steps for securing possession of such estates if the possession at the relevant time happens to be of some persons other than intermediaries. Therefore, the

corollary that ensues is that after the vesting order has been made, it is the Collector and not the intermediary who can adopt measures for securing possession from the trespassers in which category the Company is said to fall. Hence, I reject the submission made by Shri M. K. Dutta.

9-A. There are two authorities of the Supreme Court which lend support to the view taken by me. The first one is *Surajnath Ahir and Others Vs. Prithinath Singh and Others*, . Their Lordships of the Supreme Court had to interpret Sections 3 and 4 of the Bihar Land Reforms Act (30 of 1950 as amended by Act 16 of 1959). Subsection (1) of S. 3 of that Act empowers the State Government to declare by notification that the estates or tenures of a proprietor or tenure-holder specified in the notification have passed to and become vested in the State. Section 4 of the same Act mentions the consequences which follow on the publication of a notification under sub-section (1) of S. 3. According to Section 4(a), such estate or tenure including the interests of the proprietor or tenure-holder in the various objects mentioned therein shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances, and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure other than the interest expressly saved by or under the provisions of the Act. Sections 3(1) and 4(a) of the Bihar Act correspond in my opinion, respectively to Section 134(1) and Section 135(a) of the Act. Their phraseologies are almost identical. The Supreme Court held in the case of *Suraj Ahir* that the provisions of Section 4(a) of the Bihar Act make it absolutely clear that after the vesting of the estate, no interest other than that expressly saved by or under the provisions of the Act remained in the erstwhile proprietors. It was observed further that the right to recover possession from the trespasser also got vested in the State. The other authority of the Supreme Court is *Haji Sk. Subhan Vs. Madhorao*, . There the question of interpretation of identical provisions of the Madhya Bharat Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act of 1951 was involved and the view taken was exactly on line with that adopted in *Suraj Ahir's* case.

10. As a result of the discussion of the various provisions of the Act in the light of the observations of the Supreme Court in the two cases cited above, I hold that with effect from the date of the notification issued by the Administrator, u/s 134(1) of the Act, the plaintiffs ceased to have any right, including the right to recover possession from the trespassers, respecting the land in dispute. As a consequence of this finding, the suit of the plaintiffs must fail.

11. Another point raised by Shri Bhattacharjee was that the two Courts below had gone out of their way in holding that the suit of the plaintiffs was within time. His exact submission on the point was that there was absolutely no evidence to support the finding that the suit had been filed within 12 years of plaintiffs' dispossession from the land in dispute. After going through the judgments of the two Courts and the relevant data on the record, I feel satisfied that this submission of Shri Bhattacharjee is also weighty and so must prevail.

Shri M. K. Dutta did not contest the proposition that the plaintiffs had to file the suit for recovery of possession within 12 years from the date of their dispossession. The trial Court held, while discussing issue No. (3) bearing on limitation, that "It is very difficult to arrive at conclusion as to the factum of possession in going by oral evidence of witnesses examined in this case." The District Judge was equally forthright about the value of the evidence led by the plaintiffs. He observed in his judgment "From the evidence of the P. Ws. and D. Ws. it is not very clear as to when the defendants began to encroach upon the suit land, but it is clear that the plaintiffs came to Court within 12 years from the date of the dispossession." If the District Judge could not record a firm finding about the date when the defendants encroached upon the land in dispute, which, In other words, means that there was no dependable material to show upto what date were the plaintiffs in possession, I cannot comprehend how could he hold that the plaintiffs had filed the suit within 12 years of their dispossession. The period of 12 years within which to file the suit has to commence from the date of dispossession, and if the date of dispossession could not be ascertained it was not possible for the Court to hold that the suit had been filed within time. Two very significant points were mentioned by the plaintiffs in paras 11 and 12 of the plaint. Firstly, It was stated that the defendants began to dispossess the plaintiffs from the month of Ashar or Sravan, 1338 T. E. by planting tea bushes, that when objection was raised by the plaintiffs against such trespass, committed by the defendants, the latter agreed to vacate the land encroached upon if it was found that it actually belonged to the plaintiffs, that subsequently the defendants went back on that commitment, and that they continued usurping more area of the plaintiffs by tea plantations thereon until 22nd of Baisakh, 1349 T. E., by which date they had usurped all the 8 drones of the land involved in the suit The other fact stated in the plaint was that the "Particulars regarding the time when the defendant Company began to possess a particular plot out of the lands mentioned in Schedule D will be submitted later on to the Commissioner at the time of local investigation." It has to be mentioned that such particulars were never supplied. It follows clearly from the allegations made in the plaint that though various parts of the land in dispute were encroached upon by the defendants on different dates the plaintiffs could not plead precisely when those parts were encroached upon by the defendants.

12. I am cognizant of the facts that the Company has come to this Court In second appeal, and that while hearing second appeals the limitations prescribed by Sections 100 and 101 of the Civil P. C have to be taken into account. However, it is well settled that the question whether there is any evidence to support a finding of fact is a question of law and such a question can be taken up in second appeal. In other words, where a finding is not based on any evidence, the aggrieved party can challenge its correctness on the footing that a question of law arises for determination. The extracts reproduced above from the judgments of the two Courts below and the plaint clearly bring out that there is no data on the record on which to base the finding that the plaintiffs have come to the Court

within 12 years of their dispossession. Hence, this Court would be justified in examining the question of limitation.

13-14. (His Lordship after considering the evidence on question whether the suit has been filed within limitation, proceeded:)

15. In view of the above discussion of the plaintiff's evidence relied upon by their counsel, I have no misgivings in my mind that they have utterly failed in proving that the suit had been filed within 12 years of their dispossession. Hence, the suit is clearly barred by time.

16. No other point was urged in this Court by the parties' counsel.

17. In view of the findings recorded above, I allow the appeal, set aside the decrees of the Courts below, and dismiss the suit of the plaintiffs. This suit has been pending for a period of almost 30 years ago. Taking that fact into consideration and the other relevant circumstances I have decided to leave the parties to bear their own costs in all the three Courts and order accordingly.

Appeal allowed.