
(1989) 11 GAU CK 0027
In the Gauhati High Court
Case No : S.A. No. 188 of 1987

Mustt. Sunaban Bewa and Others

APPELLANT

Vs

Shri Manehab Ali Sekh

RESPONDENT

Date of Decision : 23-11-1989

Acts Referred:

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 54A, 66

Citation : (1990) 1 GLR 190

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : A.K.A. Laskar, for the Appellant; A.R. Banerjee and D.C. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, J.—This second appeal is by Defendant Nos. 2 and 3 and legal heirs of Defendant No. 1. The Defendants lost in both the Courts below.

2. According to the Plaintiff he purchased 8B. OK. 11 1/2 gondas of land from Jhakali Bibi on 2-8-38 by a registered sale deed with delivery of possession and became a land holder under the government. The Khatian No. 231 containing Dag. No. 553 was issued in his favour. The Plaintiff has stated that there was no tenant under him. According to the Plaintiff on 10-1-78 Defendants dispossessed him from the land and they have claimed to be tenants. On enquiry Plaintiff came to know that Defendant No. 1 had obtained a tenancy Khatian. In the plaint it has been stated that Defendant No. 1 allowed Defendant No. 2 and 3 to occupy the suit land. As Plaintiff was dispossessed the present suit has been filed for a declaration of right, title and interest over the suit land and also for possession and correction of revenue records. The suit was contested by Defendant No. 1 who pleaded that he was a tenant under Jhakali Bibi and after purchase by the Plaintiff he continued to be a tenant under the Plaintiff by paying rent. Defendants No. 2 and 3 did not file any written statement and suit was decreed ex parte against them.

3. The only point urged by Mr. Laskar, learned Counsel for the Appellants is that the civil Court has no jurisdiction in view of Section 66(c) of the Assam (Temporarily Settled Areas) Tenancy Act, 1971. In this connection Mr. Laskar has placed reliance in the decision of this Court passed in Second Appeal No. 35 of 1979 which was disposed of by judgment dt. 5-3-87 and the parties in the said second appeal were Rajabali Chouhan v. Ghanashyam Nath and Ors. On the other hand Mr. Banerjee, learned Counsel for Respondent has drawn my (sic) to the decision of this Court in Nur Islam and Ors. v. Troloikhya Nath Hazarika (1989) 1 GLR 187.

Section 66 of the Act runs as follows:

66. Matters exempted from cognizance of Civil Court: Except where otherwise expressly provided for in this Act or the Rules made thereunder, no Civil Court shall exercise jurisdiction in any of the following matters:

- (a) Claims to enhancement, reduction or alteration of rent of holdings;
- (b) Claims to deposit rent;
- (c) Preparation of record-of-rights under Chapter X and preparation, signing, or alteration of any document contained therein;
- (d) Maintenance of record of rights;
- (e) Claims to restoration of possession u/s 54A

In these matters, the jurisdiction shall only be with the Revenue Court or Officer as the case may be.

4. On going through the said section it is clear that the jurisdiction of the civil Court is barred in respect of preparation or record-of-rights and preparation, signing or alteration of any document therein. In Rajahali (Supra) this Court considered the relevant sections of the Act and held that the jurisdiction of Civil Court is barred relating inter-alia to preparation of record-of-rights. The Court further held that there may be cases between the landlord and tenant, say relating to eviction of a tenant, wherein the entries made in the record-of-rights may be challenged and such a challenge would be entertainable by a civil Court though the burden of proving that the entry is incorrect shall lie on the party so asserting. I see no reason to take a different view. In Nurul Islam (Supra) on the basis of the decision of the Apex Court in Magiti Sasamal Vs. Pandab Bissoi, held that the question of relationship of landlord and tenant between the parties can be decided by a civil Court and is not barred u/s 66 of the aforesaid Act. In that case also the suit was filed for a declaration of right, title and interest and confirmation of possession and the plea taken that the suit was barred u/s 66 was rejected.

5. In the present appeal also, as stated earlier, the suit is for declaration of right, title and interest and for recovery of possession and in view of the above law I do not find any merit in the contention of Mr. Laskar. In other words the present suit

is not barred u/s 66 of the aforesaid Act.

6. Mr. Banerjee has further urged that this appeal is not maintainable and in this connection my attention has been drawn to the following facts:

From the impugned judgment it is clear that the suit was contested only by Defendant No. 1 and not by Defendants No. 2 and 3. Appellants Nos. 2 and 3 herein were Defendants 2 and 3 respectively. The learned lower appellate Court by order dated 1-6-87 duly recorded the fact of death of Defendant No. 3 on 3-1-85 and also recorded the fact of abatement of the appeal in respect of the said Defendant. On 4-5-87 the learned lower appellate Court after hearing the parties recorded that Defendant No. 1 died and the learned lower appellate Court by the said order accordingly passed abatement order of the appeal in respect of Defendant No. 1. The present Appellant Nos. 1(a) to (h) are the legal heirs of Defendant No. 1.

7. In view of the above factual position I accept the contention of Mr. Banerjee that the present appeal is not maintainable. In view of the abatement of the appeal before the learned lower appellate Court and as the said order was not set aside and further there was no substitution of the legal heirs, the present appeal filed by the legal heirs of Defendant No. 1, the contesting Defendant is not maintainable. Mr. Laskar, learned Counsel for the Appellants has produced before this Court a death certificate showing the date of death of Defendant No. 1 as on 2-5-87. At this stage I am unable to accept this certificate in view of the above position. I, therefore accept the submission of Mr. Banerjee.

In the result appeal is dismissed. No costs.