
(2006) 11 GAU CK 0032
In the Gauhati High Court

Pannalal Ghosh and Others

APPELLANT

Vs

Sudhir Chandra Nag and Others

RESPONDENT

Date of Decision : 03-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 47
Limitation Act, 1963 — Section 17

Citation : (2007) 2 GLR 135 : (2006) GLT 510 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.B. Pal, J.—This civil revision petition has arisen from the order dated 30.6.1999 passed by the Civil Judge, Senior Division, Kailashahar, North Tripura in Miscellaneous Case No. 12/1998 in connection with 3 EX(T)/1992. By the said order which has been impugned in the present revision, the objection of the judgment-debtors u/s 47 of the CPC with regard to executability of the decree passed in Title Suit No. 98/1952 by learned Munsiff, Kailashahar has been allowed with the conclusion that the said decree cannot be executable.

2. A brief narration of the material facts may be noticed at the outset.

(i) One Akhil. Chandra Ghosh (the predecessor in interest of the petitioners herein) instituted Title Suit No. 98/1952 against one Sudhir Chandra Nag and 13 others, the respondents herein for declaration of title and recovery of possession by evicting the defendants from the suit lands appertaining to kayami taluk Nos. 37, 37/1, 37/2 and 37/3. The said suit was decreed by the learned Munsiff, Kailashahar, North Tripura on 10.3.1966 declaring that the plaintiffs (Akhil Chandra Ghosh died during pendency of the suit, whereupon his legal heirs were substituted as plaintiffs) purchased aforesaid kayami taluk lands by virtue of which they were entitled to get possession of the same.

(ii) The Tripura Land Revenue and Land Reforms Act, 1960 (for short TLR & LR

Act") provides in Section 134 - "(1) As soon as may be after the commencement of the Act, the State Government 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.

Admittedly, such a notification u/s 134 of the said Act was issued by publication in the Official Gazette declaring 15.4.1963 to be the date of vesting. On the date of vesting the aforesaid suit was pending and, therefore, the Suit lands being taluki lands, the nature and character of the right, title and interest of the talukdars after such vesting should have figured for consideration by the learned trial court which was apparently not done, as would be evident from the judgment and the decree passed by that court. In spite of the legal inroads into the rights of intermediary noticed above, the taluki rights of the petitioners herein were declared in the said Title Suit No. 98/1952. There is nothing on record to show that at any stage of the proceeding it was contended by the plaintiffs that after the vesting of intermediary right they retained the suit lands under other provisions of the said Act being within the ceiling limit. The "intermediary" has been defined in Clause (c) of Section 133 of the said Act to mean a person who holds in an estate the right, title or interest of a talukdar. It has never been in dispute that the plaintiff-petitioners claimed in the suit lands the right, title or interest of a talukdar which by operation of Section 134 shall be deemed to have vested in the Government free from all encumbrances.

(iii) Akhil Chandra Ghosh died on 29.12.1964 leaving behind his wife, sons and daughters as his legal heirs. On 9.2.1965 the legal heirs executed a power of attorney in favour of Nani Gopal Ghosh and Panna Lal Ghosh, both sons of Akhil Chandra Ghosh. Though the decree of the aforesaid suit was passed on 10.3.1966 the same was not put to execution within the statutory period of 12 years. In 1973 the legal heirs of Akhil Chandra Ghosh revoked the power of attorney and then executed a fresh one in favour of Panna Lal Ghosh only, dropping Nani Gopal Ghosh. In the year 1989 the application for execution of the said decree was instituted with a prayer for extension of the period of limitation u/s 17(2) of the Limitation Act, 1963. The grounds for extension adumbrated in the said application was that due to collusive deal between Nani Gopal Ghosh, the eldest son of Akhil Chandra Ghosh, and the judgment-debtors, the other legal heirs who are petitioners herein were kept in dark about the fate of the proceeding as well as the action taken for execution after the decree was passed. Section 17(2) of the Limitation Act comes into play only when it can be shown that the judgment-debtor has by fraud or force prevented the execution of a decree within the period of limitation. But there is a rider that such application has to be made within one year from the date of discovery of the fraud or cessation of force as the case may be.

3. The learned Munsiff, Kailashahar allowed the prayer of extension in Civil

Miscellaneous Case No. 13/1989, which was put under challenge in Civil Revision No. 54/1993. This court by an order dated 24.11.1995 in the said Civil Revision refused to interfere with the decision of the learned trial court on the ground that there was no jurisdictional error and, therefore, in view of the limited scope available u/s 115 of the CPC, no interference was called for.

4. After the legal controversy on extension of limitation period, noticed above, was concluded, thus, the decree holders pursued the execution of the said decree when the judgment-debtors filed an objection u/s 47, CPC. It was contended that the decree was not executable on two grounds. Firstly, before the judgment was delivered by the learned Munsiff on 16.3.1966, the intermediary right of the plaintiff-petitioners in the suit land stood vested in the Government on 15.4.1963. As a result, the respondents being in possession of the suit land directly became not under the State Government. Secondly, long after such vesting and in spite of the decree, the attorney Nani Gopal Ghosh purchased the suit lands from the respondents by registered deed with an agreement to re-sell, in terms of which he later transferred the lands to the respondents by registered deed. Such transactions would establish without doubt that the right, title and interest of the respondents herein in the suit lands were admitted by the attorney of the plaintiffs and, therefore, proceeding from such premises, it can be safely held that the decree has nothing to execute.

Learned trial court after careful appreciation of the issues noticed above, decided that as the plaintiffs could not show that the suit lands were retained by them being within the ceiling limit, after abolition of the intermediary rights, the decree passed in their favour ignoring the provision of Section 134 of the TLR & LR Act cannot be executed. This decision of learned executing court is now under challenge in the present revision petition.

5. Learned Counsel for the petitioners would make a submission that the executing court has travelled behind the decree by taking a view that the intermediary rights of the petitioners in the suit lands had vested in the Government by operation of Section 134 of the TLR & LR Act while such issue was not at all considered by the learned trial court while passing the decree. This submission seems to be misconceived particularly because the executing court is always free to examine whether by virtue of operation of any law a decree has become non est or non-executable. What the trial court did not do, has been done by the learned executing court. As there is no controversy that by virtue of operation of Section 134 of the TLR & LR Act, the rights of the intermediary stood abolished and vested in the Government and it being not in dispute that the petitioners claimed rights in the suit lands as talukdars, the executing court has correctly entered into the issue whether a decree passed contrary to a specific provision of law is executable or not. I do not find any reason to agree with the submission that the executing court has gone beyond its jurisdiction on this ground.

6. It is not res integra that the revisional jurisdiction strictly stands confined to

the question of jurisdiction only. Unless there is a jurisdictional error, the High Court cannot interfere with an erroneous finding on facts or law.

7. This being the position, and in view of the discussion made above, this revision petition does not appear to have any merit and consequently, the same is dismissed.

No cost.