
(2005) 08 GAU CK 0051

In the Gauhati High Court

Case No : Regular Second Appeal No. 8 of 1997

Parimal Debnath and Ors.

APPELLANT

Vs

Amod Bashi Debnath

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

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

Citation : (2008) 3 GLR 290

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

Bench : Single Bench

Advocate : A.K.Bhowmik, A.Nandi, S.Ghosh, Advocates appearing for Parties

Judgement

1. In this second appeal, the appellants have put into challenge the concurrent findings of the learned Sadar Munsiff, Agartala, West Tripura in Title Suit No. 107 of 1989 dismissing the suit of the appellants and affirmed by the learned District Judge, West Tripura, Agartala in Title Appeal No. 3 of 1996.

2. The short facts leading to the present appeal are that the appellants, who are three brothers, along with their mother Sonabashi Debnath (now deceased) filed Title Suit No. 107 of 1989 in the court of learned Sadar Munsiff, Agartala, West Tripura against the respondent herein and seven others praying for a decree declaring right, title and interest of the appellants, confirmation of their possession and perpetual injunction in respect of the suit lands described in the schedule of the plaint. During pendency of the suit, the mother of the appellants herein died leaving her sons to fight the legal battle. The appellants claimed in their pleadings that their father Purna Chandra Debnath had been possessing the suit lands since 1955 reclaiming the same denying right, title and interest of others and thus by efflux of time, the possession turned into his ownership and after demise of their father they had been possessing the suit lands. During the settlement operation at bujharat stage, the lands were recorded in the name of Relief and Rehabilitation Department of the State showing the appellants' father

in column 24 as illegal possessor. But later, the husband of the respondent Kamini Kr. Debnath (now deceased) managed to record his name in the finally published khatian as illegal possessor in the suit land and after his demise, the present respondent and others, who were arrayed as defendants in the suit tried to dispossess the appellants on 13.8.1989, compelling them to file the suit with the prayers noted above.

3. The respondent herein, who is the widow of Kamini Kr. Debnath along with others resisted the suit admitting that the suit lands were owned by the Relief and Rehabilitation Department of the Government, but as refugee, Kamini Kr. Debnath was allowed to reside on the said land and the finally published record of rights has correctly shown his name as possessor. Purna Ch. Debnath, the predecessor in interest of the appellants herein, was the brother of the respondent, who came to India from Bangladesh in 1973 and she permitted him to live with her on the suit land. After the demise of Purna Ch. Debnath, his legal heirs, the appellants herein, continued to stay in the suit land, particularly in plot No.6118. Thus they have always been permissive possessors of the suit lands under the respondent and in course of time, the appellants forced her, when she became widow having none else to support her, to take shelter with her relatives.

4. The learned trial court on the basis of the respective pleadings of the parties framed following four issues :

(i) Whether plaintiff and their predecessors have been possessing the suit land since 1955 and whether they have acquired a possessory right therein ?

(ii) Whether defendants threatened to dispossess them as alleged ? (iii) Whether plaintiffs are entitled to any relief, if so, to what extent ? (iv) Whether the suit is maintainable in its present form ?

The learned trial court dismissed the suit proceeding on the premise that the suit lands being admittedly owned by the State Government, the prayer of the plaintiffsappellants for declaration of title by adverse possession without making the State Government party to the proceeding is not maintainable. Discussing the evidence and other materials on record, the learned trial court further held that the plaintiffsappellants were not found to be in possession and consequently, the prayer for permanent injunction and confirmation of possession was not sustainable in law.

6. Against the dismissal of the suit by the learned trial court, the appellant herein filed Title Appeal No.3 of 1996 before the learned District Judge, West Tripura, Agartala before whom the appellants advanced the same argument that by virtue of their long possession they have acquired right, title and interest over the suit lands and, therefore, decree, as prayed for, should have been allowed by the learned trial court. The learned first appellate court agreed with the findings of the learned trial court that the suit is not maintainable inasmuch as the State Government is admittedly the owner of the suit lands and without making the State Government a party in the proceeding such a decree of title by prescription

is uncalled for. The learned first appellate court further held that trespassers cannot take shelter of law and it is not in dispute that the appellants herein, if at all in possession of the suit lands, are to be termed as trespassers.

7. In the second appeal, the only substantial question of law that has been framed by order dated 25.2.1997 is that whether a trespasser can maintain a suit against another trespasser for maintaining his possession ?

8. It is not in dispute that the suit lands belong to the State Government against whom no relief can be sought without making it a party. The specific prayer of the plaintiffsappellants being declaration of title by adverse possession, the question that falls for decision is as to party against whom the appellants have been adversely possessing the suit lands? Undoubtedly, the answer shall be the State Government and in such a situation, without affording any opportunity to the State Government to defend its right against the claim, the proceeding cannot be carried for final disposal.

9. I entirely agree with the concurrent findings of both the courts below that any suit for declaration of title by adverse possession in respect of lands belonging to the State Government is not maintainable in the absence of the State Government. It is a legal mandate that the State Government must be made a party in such a proceeding. The other questions regarding the possession that have been decided by both the courts below against the appellants are based on the finally published record of rights, marked as Exbt.B, which shows in column 24 the name of Kamini Kr. Debnath, the husband of respondent herein. As has been rightly held by the learned courts below, only the finally published khatians give rise to the presumption of correctness under section 43 of the TLR & LR Act and that whatever may be in the draft khatian carries no presumptive value. Relying on the finally published record a of rights, which would give rise to a presumption of possession against the appellants and in favour of the respondent, the courts below have rightly arrived at a finding that the appellants were not in possession of the suit lands and consequently, not entitled to get any decree for confirmation of possession and permanent injunction.

10. An approach has been made by the learned senior counsel for the appellants herein that the learned courts below have ignored the deposition of the respondent herein, who clearly stated that the appellants were in possession of the suit lands and, therefore, the courts below should not have made an observation that the appellants are not in possession of the suit lands.

11. The material question for consideration is whether the appellants were in adverse possession of the suit lands denying the right, title and interest of the respondent as well as the State Government, who is admittedly the owner of the same. In her deposition, the respondent, the widow of late Kamini Kr. Debnath, stated that she along with her husband came from Bangladesh to India in 1951 as refugee and got five kanis of land including the suit land from the Government by way of rehabilitation. Puma Ch. Debnath, the father of the appellants herein

was her elder brother, who had taken shelter in her house after migrating from Bangladesh much later. After death of her husband, she was subjected to torture by the appellants, who ultimately drove her out. Thus she admitted that she was not in possession of the suit lands at the time the suit was filed though before the proceeding was initiated, she was comfortably in her lands. Her admission that she had lost her possession immediately before institution of the proceeding by the appellants does not by itself wipe out whatever right that she might have acquired by her long possession in the suit lands as has been indicated in the finally published record of rights and the same factum does not give rise to any possessory right against the State or the respondent. In other words, the presumption of possession arising out of the finally published record of rights cannot stand obliterated only because before the filing of the suit she was driven out from the suit land by the plaintiffsappellants. As she has been recorded to be the possessor of the suit lands in the finally published khatian, the only irresistible conclusion to be drawn is that the appellants were physically possessing the suit lands with the n permission of the actual possessor, the respondent herein. Thus the stresses laid by the learned counsel for the appellants on her physical absence from the suit land since immediately before institution of the proceeding before the trial court does not substantially change the position as it gains no greater relevance to the present controversies.

12. It is submitted by Mr. A. Naridi, learned counsel for the respondent that in a second appeal, the court has limited scope to reappreciate the evidence to reverse the concurrent findings on facts rendered by the courts below. I entirely agree with this submission and in view of the settled legal position that unless a manifest error on the face of record can be shown or the contention of perverse findings causing resultant b failure of justice can be satisfactorily proved, it is not legally permissible for the High Court to interfere with the concurrent findings of the courts below.

13. Mr. Bhowmik advanced another argument that the learned first appellate court having not formulated the points for decision, its judgment and decree call for interference for this reason above. I am unable to agree with this submission as a perusal of the impugned judgment of the learned first appellate court as well as the learned trial court would clearly show that the question of adverse possession and the title in relation thereto has been elaborately discussed.

14. As regards the question whether State is a necessary party, a submission has been advanced that plaintiff having sought no relief against the State Govt., the suit has not suffered from nonjoinder of parties. Strong reliance has been placed on the decision of the Supreme Court in Udit Narain Singh Msalpaharia v. Additional Member, Board of Revenue, Bihar, AIR 1963 SC 786 in order to buttress the submission that the State Government is not a necessary party in a suit by a trespasser against another trespasser for declaration of title. In the said judgment, the Supreme Court in para 7 held, thus :

"(7) To answer the question raised it would be convenient at the outset to

ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

15. It would appear from the above decision that the broad principles as to who should be the necessary party or proper party have been laid there by the Apex Court. A necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made, but whose presence is necessary for complete and final decision on the question involved in the proceeding. In the present case, admittedly the appellants filed the title suit for declaration of title on the premises of a claim of long adverse possession. In order to claim such a title by adverse possession, it is mandatory for them to make the owner of the land as party in the proceeding and it is not in dispute that the State Government is the owner of the suit lands. Therefore, in my considered view, the State Government is the proper party without whose presence an effective order cannot be made and the proceeding cannot be taken to a final shape.

16. The other decision relied on by the appellants has been reported in *Sundra Naicka Vadiyar (dead) by LRs. v. Ramaswami Ayyar (dead) by his LRs*, AIR 1994 SC 532. It has been held there that findings on possession by ignoring documents, evidencing the compromise, documents containing recitals of surrender of possession and other material evidence can be called into question and reappreciated in second appeal. This judgment has no relevance in the present case, particularly because no such relevant document has been ignored by the learned courts below. The documents, which are relevant, are undoubtedly the record of rights, which have been taken as the basis for a decision on the claim of possession. The other documents like refugee card in order to prove when the parties came from Bangladesh to India, are not relevant, particularly because the refugee card of Kamini Kr. Debnath has been found to be in consonance with the date of his possession of the suit lands as reflected in the finally published record of rights.

17. In view of the discussions and the reasons noted above, I am of the considered view that in a suit by a trespasser against another trespasser where owner of the lands is not a party, the court cannot entertain any question or claim about title to the said lands. Consequently, this second appeal has no merit and the same stands dismissed leaving the parties to bear their own cost.