

(2019) 09 CAL CK 0044

In the Calcutta High Court

Case No : Civil Second Appeal (SA) No. 96 Of 1996

Pradip Kumar Ghosh & Anr

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

West Bengal Land Reforms Act, 1955 — Section 14K(c), 14L, 14M, 14S, 14T(3), 14X, 54
Code Of Civil Procedure, 1908 — Section 100
Specific Relief Act, 1963 — Section 34
West Bengal Estates Acquisition Act, 1953 — Section 67B

Citation : (2019) 09 CAL CK 0044

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Asish Chandra Bagchi, Amal Krishna Saha, Partha Pratim Roy, Sukanta Chakraborty

Final Decision : Disposed Off

Judgement

Bibek Chaudhuri, J

1. Judgment and decree passed by the learned Additional District Judge, 2nd Court at Balurghat on 17th February, 1993 in Title Appeal No.87 of 1991 affirming the judgment and decree dated 26th July, 1991 and 5th August, 1991 respectively passed by the learned Munsif, Balurghat in Title Suit No.81 of 1988 is under challenge in the instant second appeal at the instance of the plaintiffs/appellants.

2. The appellants as plaintiffs filed Title Suit No.81 of 1988 praying for declaration of title and permanent injunction against the State of West Bengal and its Officers stating, inter alia, that one Annapurna Ghosh, since deceased, was the original owner of the suit schedule property situated in different mouzas within P.S Balurghat. The suit property was recorded in the name of the said Annapurna Ghosh during revisional settlement. The plaintiffs are the grand-sons

of the said Annapurna, since deceased. The said Annapurna transferred the suit property in favour of the plaintiffs by executing two separate deeds of gift on 5th August, 1981 which were duly registered on 10th August, 1981. The plaintiffs, on attaining majority started to live separately from the family of their father. They were all along in possession of the suit property. Before institution of the suit in the year 1988, they were threatened to be dispossessed from the suit property by some followers of a particular political party. Accordingly they conducted search in the local office of the BL & LRO and came to know for the first time that the suit property was vested to the State following a proceeding under Section 14T(3) of the West Bengal Land Reforms Act (hereinafter as 'the said Act'). It is contended by the plaintiffs that the said proceeding bearing No.66/T/76 under Section 14T(3) of the said Act was initiated against Kalipada Ghosh, father of the plaintiffs. The plaintiffs have alleged that they are not family members of the family of Kalipada Ghosh. They have separate units of family and the suit property was illegally vested to the state treating the plaintiffs as members of the family of their father on 15th February, 1971.

3. The State of West Bengal contested the suit by filing written statement. The state claimed the vesting order valid, legal and operative. The order of vesting was passed after giving due opportunity to the said Kalipada Ghosh of being heard. It is also contended that the Civil Court has no jurisdiction to try the dispute as regards order of vesting under the provision of West Bengal Land Reforms Act.

4. The learned trial judge framed as many as ten issues on the basis of the pleadings of the parties. Parties led evidence.

5. While adjudicating the issues, the learned trial court held that the suit was barred under the provision of 14X of the West Bengal Land Reforms Act. It was further held that though the plaintiffs/appellants were not parties to the said proceeding under Section 14T(3) of the said Act, one of the plaintiffs all through represented his father in the said proceeding. Therefore, the plaintiff knew about the initiation of the said vesting proceeding under Section 14T(3) of the said Act. Therefore, the order of vesting is binding upon the plaintiffs/appellants. Thirdly, Chapter IIB of the said Act came into force on and from 15th February, 1971. In order to determine the ceiling limit of a family, the number of members of a particular family as on 15th February, 1971 is to be taken into consideration. On the said relevant date, the plaintiffs were minors and dependents upon their father Kalipada Ghosh. Therefore, they were rightly treated as family members of Kalipada Ghosh by the Revenue Officer while determining the ceiling limit and accordingly, suit was dismissed on contest.

6. The judgment and decree of dismissal passed in Title Suit No.81 of 1988 were assailed by the plaintiffs by filing an appeal being Title Appeal No.87 of 1991. The learned Additional District Judge, 2nd Court at Balurghat dismissed the said appeal on contest holding, inter alia, that Annapurna Ghosh, grand-mother of the plaintiffs transferred the suit property by executing two deeds of gift dated 5th

August, 1981 in favour of the plaintiffs/appellants. When Chapter IIB of the West Bengal Land Reforms Act came into force, i.e, on 15th February, 1971, both the plaintiffs/appellants were minors and were members of the family of their father Kalipada Ghosh. The proceeding under Section 14T(3) of the said Act was instituted in the year 1976; order of vesting was passed on 18th August, 1981. Kalipada Ghosh preferred an appeal before the appellate authority challenging the said order passed in the proceeding under Section 14T(3) of the said Act being No.66/T/76 and the order dated 18th August, 1981 was set aside by the learned Additional District Magistrate (L.R), West Dinajpur. The said proceeding was finally disposed of on 26th May, 1988. It was found by the learned lower court of appeal that when the proceeding was heard, i.e., on 16th April, 1981, the plaintiffs/appellants had no right, title and interest over the suit property. Kalipada Ghosh, father of the appellants never prayed for exemption of the suit properties from the ceiling limit which he entitled to retain. The learned lower court of appeal further found that the suit property originally was under joint ownership of both Annapurna Ghosh and Kalipada Ghosh. In a suit for partition being O.C Suit No.15 of 1963 between Annapurna Ghosh and Kalipada Ghosh, a preliminary decree was passed and the suit property was subsequently allotted to the share of Annapurna exclusively. However, in the said partition suit, no final decree was drawn up. The suit property was all along under the possession of the father of the plaintiffs/appellants. Therefore, order of vesting was passed under Section 14T(3) of the said Act. The learned lower appellate court concurred with the findings of the learned trial court to hold that the suit was barred under Section 14X of the West Bengal Land Reforms Act.

7. It is found from the order book that the second appeal was presented on behalf of the plaintiffs/appellants on 11th May, 1993. By an order dated 23rd November, 1993, the appeal was admitted for hearing. However, no substantial question of law was formulated under Section 100 of the Code of Civil Procedure at the time of admission of the appeal for hearing.

8. Subsequently vide order dated 2nd July 2019, this Court formulated the following substantial questions of law involved in the instant appeal for adjudication and decision:-

"(a) Whether the lower Courts below substantially erred in law in holding both the plaintiffs/appellants as members of the family of their father in relation to a proceeding under Section 14T(3) of the West Bengal Land Reforms Act without considering the fact that the plaintiffs/appellants were separate from their father;

(b) Whether both the Courts below substantially erred in law in holding that the properties, which the plaintiffs/appellants had acquired by virtue of deeds of gift executed by their grandmother on whose name separate khatian and record of rights were published, would be included in assessing the ceiling of the family of the father of the plaintiffs/appellants for the purpose of vesting."

9. Mr. Asish Chandra Bagchi, learned Senior Counsel on behalf of the appellants

submits that the judgment and decree of dismissal passed by the learned trial court in Title Suit No.81 of 1988 and affirmed by the lower Court of appeal in Title Appeal No.87 of 1991 cannot be sustained on the following grounds:-

- i) The suit property was the exclusive property of Annapurna Ghosh, since deceased. It was recorded in her name in separate khatian or revenue record.
- ii) Annapurna Ghosh, since deceased was the grand-mother of the present appellants. She transferred the suit property by executing two deeds of gift dated 5th August, 1981 which was subsequently registered on 10th August, 1981. Annapurna Ghosh was not a member of the family of Kalipada Ghosh, father of the appellants.
- iii) Mother of a raiyat is not included within the definition of "family" in Section 14K(c) of the said Act.
- iv) Neither Annapurna Ghosh nor the present appellants were parties to the proceeding under Section 14T(3) of the said Act.
- v) For the reasons stated above, Annapurna's right in the suit property remained unaffected and it passed to her grand-sons by virtue of the deeds of gift.

10. Mr. Partha Pratim Roy, learned Advocate on behalf of the respondent-State of West Bengal, draws my attention to paragraph-3 of the plaint which deals with the cause of action for the suit. According to the plaintiffs, cause of action for the suit arose sometimes in the month of Vadro, 1395 B.S. corresponding to September, 1988 when some supporters of a particular political party with the active help and assistance of Government employees tried to obstruct and create disturbance over the peaceful possession of the suit property by the appellants. Mr. Roy next draws my attention to the prayer "Ga" of the plaint where the plaintiffs/appellants prayed for a declaration that the order passed by the revenue officer in the proceeding under Section 14T(3) of the said Act was null and void, illegal and without jurisdiction. According to Mr. Roy in view of the provision contained in Section 14X of the West Bengal Land Reforms Act, Civil Court cannot pass such decree. Therefore, the impugned judgment and decree passed by the learned Court of appeal below affirming the judgment and decree of dismissal passed by the trial court cannot be questioned in this appeal as the Civil Court's jurisdiction is barred.

11. Mr. Roy further has pointed out that the proceeding under Section 14T (3) was initiated in 1976. The order of vesting was passed by the revenue officer on 18th August, 1981. The father of the appellants, namely, Kalipada Ghosh preferred an appeal before the Additional District Magistrate (L.R), Balurghat against the said order passed by the revenue officer on 18th August, 1981. The initial order passed by the revenue officer was set aside and the proceeding was remanded back to the revenue officer for consideration afresh. The certified copy of the said proceeding was marked Exhibit-A during trial of the suit. The learned Advocate for the respondents refers to the order dated 17th May, 1988

wherefrom it is found that Kalipada Ghosh was represented by his learned Advocate and it was specifically pleaded on behalf of Kalipada Ghosh that the mother of the raiyat transferred her land to her grand-sons in the year 1984 (sic 1981?). The mother of the raiyat is not a member of the family of the raiyat in view of the definition of "family" contained in Section 14K(c) of the said Act. Therefore, Kalipada Ghosh claimed retention of the suit property which was transferred in favour of his sons by her mother. The Revenue Officer duly considered the objection in this regard made by the raiyat. If Kalipada Ghosh or the present appellants had any grievance against the order dated 17th May, 1988, they could have preferred appropriate application before the L.R.T Tribunal, West Bengal. According to Mr. Roy, the said order cannot be questioned in Civil Court.

12. It is further submitted by Mr. Roy that the appellants did not make any allegation against their father that he failed to protect the interest of the appellants or that he committed fraud against the interest of the appellants. The record of the proceeding under Section 14T(3) shows that one of the plaintiffs all along participated in the proceeding and represented their father Kalipada Ghosh. Subsequent to the order passed by the Revenue Officer, the appellants are estopped from challenging the order of vesting passed in the proceeding under Section 14T(3) of the said Act.

13. I have considered the submission made by the learned Advocates for the appellants and the respondents No.1 at length. I have also examined the lower court records and meticulously perused the judgments passed by the learned trial court as well as the learned court of appeal. The appellants as plaintiffs filed Title Suit No.81 of 1988 for declaration of their title and permanent injunction. As a consequential relief, they also prayed for a decree declaring the proceedings under Section 14T(3) of the said Act null and void, illegal, inoperative and not binding upon them. Therefore, the suit was filed under the provision of Section 34 of the Specific Relief Act. From the materials lying on lower court record, it is ascertained that the dates of birth of the appellants were 13th May, 1959 and 10th March, 1960 respectively (See Exhibit-7 and Exhibit-8). Therefore in the month of February, 1971 the appellant No.1 was aged about 12 years and the appellant No.2 was 11 years old. Indisputably, both the appellants were minors on 15th February, 1971. Section 14L of the said Act states that on and from the commencement of Chapter IIB, no raiyat can hold land in excess of the ceiling area applicable to him under Section 14M of the said Act. The provisions of Section 14M lay down the ceiling area with respect to various classes of raiyats and it varies from 2.50 standard hectares to 7 standard hectares in relation to number of family members of the raiyat. Family of a raiyat is defined in 14K(c) of the said Act. The definition is quoted below:-

"14K. Definitions.-In this Chapter,-

(a) ...

(b) ...

(c) "family", in relation to a raiyat shall be deemed to consist of-

(i) himself and his wife, minor sons, unmarried daughters, if any,

(ii) his unmarried adult son, if any, who does not hold any land as a raiyat,

(iii) his married adult son, if any, where neither such adult son nor the wife nor any minor son or unmarried daughter of such adult son holds any land as a raiyat,

(iv) widow of his predeceased son, if any, where neither such widow nor any minor son or unmarried daughter of such widow holds any land as a raiyat,

(v) minor son or unmarried daughter, if any, of his predeceased son, where the widow of such predeceased son is dead and any minor son or unmarried daughter of such predeceased son does not hold any land as a raiyat, but shall not include any other person.

Explanation I.-For the purposes of this Chapter, an adult unmarried person shall include a man or woman who has been divorced and who has not remarried thereafter:

Provided that where such divorced man or woman is the guardian of any minor son, or unmarried daughter, or both, he or she, together with such minor son or unmarried daughter, or both, shall be deemed to be a separate family.

Explanation II. -References in this clause to wife, son or daughter shall, in relation to a raiyat who is a woman, be construed as references to the husband, son or daughter, respectively, of such woman;"

14. Therefore, it is clear that mother of a raiyat does not come within the definition of family of a raiyat.

15. It is found from the judgment passed by the learned lower court of appeal in Title Appeal No.87 of 1991 that the suit property was previously owned by Kalipada Ghosh and his mother Annapurna Ghosh. A suit for partition being O.C Suit No.15 of 1963 was instituted by Annapurna Ghosh against his son Kalipada. The said suit was decreed in preliminary form on 1st August, 1963. In the said suit, the respondent No.1 was impleaded as defendant No.1. The parties were directed to effect partition by metes and bounds within a certain period of time amicably, failing which it was directed that final decree of partition will be drawn up on the basis of commissioner's report. It is pleaded by the appellants that Annapurna and Kalipada effected partition in respect of the suit property amicably. Therefore, no final decree was drawn up. Be that as it may, it is also found from the record that the suit property was recorded exclusively in the name of Annapurna Ghosh in revenue records in separate khatian. Therefore, Annapurna Ghosh was the exclusive owner of the suit property by virtue of the decree passed in partition suit followed by preparation of revenue records by the

State of West Bengal in her name. Annapurna transferred the suit property in the names of the appellants on 5th August, 1981 by executing two separate deeds of gift. At the time of execution of the deeds of gift the appellants attained majority. The appellants have claimed declaration of their title in respect of the suit property.

16. Certified copy of the proceeding under Section 14T of the said Act bearing case No.66/T/76 was produced before the learned trial court at the time of hearing of the suit (Exhibit-A). I have found that the order dated 17th May, 1988 discloses that Kalipada Ghosh, father of the appellants pleaded before the Revenue Officer that her mother Annapurna Ghosh was a raiyat in respect of the suit property. But the Revenue Officer did not accept such contention made by Kalipada Ghosh.

17. Both the courts below failed to appreciate that share of Annapurna Ghosh was declared in a suit for partition being O.C Suit No.16 of 1963 by a preliminary decree dated 1st August, 1963 (Exhibit-5) the appellants pleaded during trial that on the basis of the preliminary decree, both Kalipada and his mother Annapurna amicably partitioned their joint property according to their share. LR Record of Rights in respect of the suit property was published in the name of Annapurna Ghosh. She transferred the suit property to the appellants by executing two deeds of gift dated 5th August, 1981. At the time of execution of said deeds of gift in favour of the appellants, they attained majority. The respondent No.1 never raised any dispute with regard to ownership of Annapurna over the suit property. It is important to note that Annapurna was not served any notice of the proceeding under Section 14T(3) of the said Act or that no separate proceeding was initiated against Annapurna for determination of her ceiling and the number of her family members. In *Har Pyari vs. Second Additional Judge, Moradabad* reported in (2001) 10 SCC 525, in a proceeding for determination of excess area under UP Imposition of Ceiling on Land Holdings Act, 1960, the holding was found to be in possession and ownership of two sisters. The state proceeded under the said Act and order to take away the excess land in question without considering the joint holding of the appellant who was one of the co-sharers on whom no notice was served. The Supreme Court having found that the land belonged to two joint holders being within the ceiling limit held that there was no excess land with the appellant for the same to be vested in the state. Therefore, the order of vesting was set aside.

18. In the instant case proceeding under Section 14T(3) under the said Act was initiated against Kalipada as if he was the raiyat in respect of his land as well as the suit property which was exclusively owned by Annapurna under separate khatian.

19. Section 14X of the West Bengal Land Reforms Act prohibits any Civil Court to decide or deal with any question or to determine any matter which is by or under chapter IIB of the said Act required to be dealt with or to be determined by the Revenue Officer or other authority specified therein and no order passed or

proceeding commenced under the provisions of this chapter shall be called in question in Civil Court.

20. In *Jitendra Nath Chalki & Others vs. Bimal Krishna Kundu Chowdhury & Another* reported in 2006 (2) CHN 687, it is held by the Division Bench of this Court that the Revenue Officer in preparing the Record of Rights does not decide question of title when there is a dispute regarding ownership of the land, but decides the dispute on the basis of possession only and that too in summary manner. It is thus clear that while preparing Record of Rights relating to entry of name of any person, the Revenue Officer is not the proper authority to decide question of title and he decides only in a summary manner on the basis of possession. It is well settled law that Record of Rights are not document of title and Record of Rights is, prima facie, regarded as documents of possession and it is also equally settled that entries in Record of Rights are rebuttable by cogent evidence. If substantial question of title is involved, the Civil Court can investigate the question of title and Section 67B of the West Bengal Estate Acquisition Act does not affect the decree passed by the Civil Court.

21. In a subsequent decision in the case of *Tapan Kr. Saphui vs. State of West Bengal* reported in 2005 (5) CHN (CAL) 264, the Division of this Court held that the decree passed in the Civil Court cannot be challenged in collateral proceeding even if it is void. Only the Civil Court is empowered to decide disputed question of title over the suit property.

22. In *Union of India vs. Vasavi Co-Op Housing Society Ltd and others* reported in AIR 2014 SC 937, the Hon'ble Supreme Court held as under:-

"17. This Court in several Judgments has held that the revenue records does not confer title. In *Corporation of the City of Bangalore vs. M. Papaiah and another* (1989) 3 SCC 612 : (AIR 1989 SC 1809) held that "it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law." In *Guru Amarjit Singh vs. Rattan Chand and others* (1993) 4 SCC 349 : (AIR 1994 SC 227) this Court has held that "that the entries in jamabandi are not proof of title". In *State of Himachal Pradesh v. Keshav Ram and others* (1996) 11 SCC 257 : (AIR 1997 SC 2181) this Court held that "the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff."

Paragraph 20 of the aforesaid judgment is also relevant and quoted below:-"20. We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Ext.X-1 is Classer Register of 1347 which according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered

family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned."

23. Thus, the law is well settled that whenever question of title is in dispute, the Civil Court has the jurisdiction to entertain a suit and declare title. In the instant case, both the courts below substantially erred in law in holding that in view of the decision of the Revenue Officer, the appellant's prayer for declaration of title over the suit property is barred under the provision of Section 14X of the West Bengal Land Reforms Act. I have already come to the conclusion that Annapurna was the absolute owner of the suit property and it was recorded in separate revenue records in her name. The appellants acquired title over the suit property by virtue of two separate deeds of gift executed on 5th August, 1981 and registered on 10th August, 1981. Both the courts below erred in law while refusing the prayer for declaratory decree in respect of title of the appellants over the suit property.

24. Under Section 14X of the West Bengal Land Reforms Act, Civil Courts power in respect of the matter specifically provided in chapter IIB of the West Bengal Land Reforms Act is excluded. Section 14T(3) empowers the Revenue Officer to determine the extent of land of a raiyat and to pass an order of vesting of land in excess of ceiling limit of a raiyat under Section 14S of the said Act and take possession of such lands. The Civil Court cannot pass any judgment or decree in respect of the Revenue Officer's authority under Section 14T(3) of the said Act. Therefore, the appellants are not entitled to a decree in terms of prayer "Ga" of the relief claimed in the plaint.

25. In view of the above discussion I have no other alternative but to hold that the judgment and decreed of dismissal passed by both the courts below are liable to be set aside.

26. The instant appeal is thus allowed.

27. Substantial questions of law are thus decided in favour of the appellants.

28. The appellants do get a decree for declaration that they have lawful title over the suit property mentioned in the schedule of the plaint.

29. The appellants are at liberty to file a regular statutory appeal before the appellate authority under Section 54 of the West Bengal Land Reforms Act for challenging the legality of the order passed by the Revenue Officer in the proceeding under Section 14T(3) being Case No.66/T/76 within 60 days from date, and in the event such an appeal is filed, the Revenue Officer shall dispose of the same on merit in accordance with law.

30. The appellants do also get decree for permanent injunction against the respondent restraining them from disturbing the possession of the appellants over the suit property, without following due process of law.

31. The instant appeal is thus disposed of on contest against the respondent

No.1 and exparte against the rest.

32. There shall be no order as to cost.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.