
(2007) 01 GAU CK 0069
In the Gauhati High Court

Ram Prasad Koiri and Another

APPELLANT

Vs

Krishna Kumar Goala and Others

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 154, 80

Citation : (2007) 3 GLT 995

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Hussain Saikia, J.—Heard learned Counsel for the parties.

2. The substantial questions of law so framed in this Second Appeal at the time of admission are as follows:

1. Whether the matter of cancellation of allotment certificate for violation of terms and conditions thereof being a matter within the purview of Sections 154(1)(s)(m) of the Assam Land and Revenue Regulation, 1886 the lower Court was justified in holding that the Civil Court had the jurisdiction to try the instant suit?

2. Whether in the facts and circumstances of the case, the jurisdiction of the Civil Court is barred under the provision of Section 154 of the Assam Land and Revenue Regulation, 1886?

3. Whether the lower appellate Court was legally correct in holding that the land of the plaintiff maintainable under the law?

3. The plaintiff/respondent herein instituted a title suit being T.S. No. 100/94 before the learned Munsiff No. 1, Hailakandi basically praying for a decree declaring that:

(a) the plaintiff was an unevictable raiyat in respect of suit land due to his

possession over 100 years.

(b) the order passed by the defendant No. 3 i.e., Addl. Deputy Commissioner, Revenue, Hailakandi in Misc. Case No. 3/1994-95 on 1.12.94 was illegal and inoperative and for declaring.

(c) the permanent injunction restraining the defendant from taking action in the light of the order passed on 1.12.94 above mentioned and

(d) upholding the issuance of "Baitaranpatra" and granting patta in the name of the plaintiff.

4. The defendants/appellants contested the suit primarily raising a preliminary question as regards the maintainability of the suit on the count of jurisdiction claiming that the Civil Court had no jurisdiction to entertain such a suit as the same was hit by Section 154 of the Assam Land and Revenue Regulation, 1886 (for short, "the Regulation").

5. The Trial Court on the basis of the pleadings exchanged by and between the parties framed as many as seven issues which are quoted as under:

1. Is there any cause of action for the suit?
2. Whether the court has jurisdiction to try the suit?
3. Whether valid notice u/s 80 CPC was served on the state?
4. Whether the suit is maintainable?
5. Whether the predecessor of the plaintiff has been enjoying the possession over the suit land beyond 100 years continuously?
6. Whether the order of D.C. passed on 1.12.94 in Misc. Case No. 3/94-95 are illegal and inoperative?
7. To what relief/reliefs the plaintiff is entitled?

6. Since the defendants/appellants questioned the maintainability of the suit due to lack of jurisdiction in entertaining the civil suit of such nature, the trial Court took up Issue Nos. 2 and 3 above mentioned first to decide and after extensive consideration of the materials available on record arrived at a finding by his judgment dated 13.9.96 that the suit was not maintainable due to the bar imposed by virtue of Section 154 of the Regulation.

7. Dissatisfied with such finding, the plaintiff/respondent herein moved the appellate Court i.e., the learned Civil Judge (Sr. Division), Hailakandi through T.A. No 26/96 which was after hearing the learned Counsel for the parties and also taking into consideration the entire facts and circumstances of the case based on the question of maintainability as mentioned above, allowed the appeal by judgment dated 10.3.98 holding that the suit was maintainable as Section 154 of the Regulation had no applicability in the instant case and the Civil Court had

jurisdiction to try the instant suit. Consequently, the judgment and decree rendered by the trial Court was set aside and quashed.

8. It is contended on behalf of the defendants/appellants that the appellate Court totally ignored and misinterpreted the provisions of Section 154(1)(a) which provides that no Civil Court shall exercise jurisdiction as regards question as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force.

9. It would be relevant and necessary to quote the relevant provision of Section 154(1)(a) which reads as under:

154. Matters exempted from cognizance of Civil Court--

(1) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following--

a. question as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force;?.

10. Mr. B.C. Das, learned Sr. counsel representing the appellants has forcefully argued that the expression "questions as to the validity or effect of any settlement" also includes cancellation though the word "cancellation" has not been expressly inserted in this provision. Referring to the factual situation of this case, he has contended that when admittedly the plaintiff respondent was settled by the Government on acquisition of the land in question under the Assam Fixation of Ceiling on Land Holding Act, 1956(for short, "the Ceiling Act"), the cancellation of the said settlement by order dated 1.12.94 which was challenged in the Civil Court, is not permitted to be agitated before the Civil Court because such cancellation of settlement shall attract the provision of Section 154(1)(a) as mentioned above. According to him, once the question as to the validity or effect of any settlement is completely barred by the above mentioned clause, the cancellation of the said settlement also shall come within the purview of Section 154(1)(a) as quoted above and as such the learned appellate Court committed an error of law which gives rise to the formulation of the above mentioned substantial questions of law for proper adjudication of this appeal.

11. Per contra, Mr. R.P. Sarma has submitted that the plaintiff/respondent has become a land holder u/s 16(2) of the Ceiling Act and once he attains the status of land holder, he gets permanent and heritable right over the suit land so vested upon him by Section 9 of the Regulation and as such he has every right to challenge his title and interest including the cancellation of said settlement in the Civil Court though he has an alternative remedy u/s 147 of the Regulation wherein the appeal is provided against the order of Deputy Commissioner before the Board of Revenue.

12. In support of his submission, Mr. Sarma has referred to decision of this Court reported in (1989) 1 GLR 131 (Daulatram Lakhani v. State of Assam and Ors.). It

is stated by him that in view of the ratio laid down in the Daulatram Lakhani's case (supra) and also in the factual background of the instant case, the learned appellate Court was justified in holding that Section 154(1)(a) as claimed by the appellants was not applicable in this case and the findings arrived at by the trial Court was rightly set aside and quashed.

13. For the sake of convenience it would be necessary to reproduce the relevant provision of law so referred to and relied upon by the learned Counsel in advancing their respective arguments in support of their respective case.

14. Section 16 of the Ceiling Act reads as under-

16. The manner of disposal of excess land-(1.) If there is any cultivating tenant in occupation of the land acquired from an over then he shall [be given] settlement of such land within a prescribed period on the following conditions, namely:

(a) That the area of land so settled, together with any other lands held by him or any member of his family either as tenant or as owner shall not exceed in the aggregate the limit fixed u/s 4 of this Act, and

(b) That he shall pay to the State Government in one or more equal annual installments not exceeding five an amount fixed by it but not exceeding the compensation payable by the State Government for acquisition thereof.

Provided that [***] any amount which he is entitled to received as compensation under the provisions of this Act, [shall be adjusted] against an equal amount which [he] is liable to pay under Clause (b) above.

(2) On payment of the full amount under Sub-section (1) above, the land shall be settled with him with the status of a land holder as defined in the Assam Land and Revenue Regulation, 1886 (Regulation 1 of 1886)

15. Section 147 of the Regulation may be noted as under:

147. Authority to whom appeals-lie-1 Appeals shall lie under this Regulation as follows:

(a) to the Board from orders, original or appellate passed by a Deputy Commissioner, Settlement Officer or Survey Officer.

16. Section 9 of the Assam Land and Revenue Regulation provides as under:

9. Rights of landholders:-A land holder shall have a permanent, heritable and transferable right of use and occupancy in his land, subject to-

(a) the payment of all revenue, taxes, cases and rates from time to time legally assessed or imposed in respect of land;

(b) the reservation in favour of the [Government] of all quarries and of all mines minerals and mineral oils, and of all buried treasure, with full liberty to search for

and work the same, paying to the land holder only compensation for the surface damage as estimated by the Deputy Commissioner; and

(c) the special conditions of any engagement into which the land-holder may have entered with the Government.

17. Having gone through the above mentioned provisions of law as well as upon due consideration of the facts and circumstances of the case, it appears that on the basis of settlement of the land by the Government with the plaintiff/respondent under the Ceiling Act, the plaintiff has got the status of a land holder and accordingly he is protected by Section 9 of the Regulation having been vested with permanent, heritable and transferable right of use and occupancy over the land. In cancellation of such allotment, the remedy for cancellation of any such settlement of the land of any person after having acquired the status of land holder, lies in the appeal u/s 147 of the Regulation. However, in the instant case, instead of exhausting this remedy, the petitioner has approached the Civil Court and such action of the plaintiff/respondent has been supported by the decision of the Daulatram Lakhani's case (supra).

18. In Daulatram Lakhani's Case (supra) in Paragraph 22 being the operative part, the Full Bench of this Court held as follows:

22. From what has been stated above, we would say that in a matter like the one at hand Civil Court's jurisdiction would not be barred in the following cases:

- (1) When the order under Rule 18 is patently illegal or without jurisdiction.
- (2) Where the remedy provided by the Regulation to adjudge the objection raised is not sufficient.
- (3) Where complicated questions relating to title are involved; or
- (4) Where the plaintiff seeks declaration of his title over the land from which he is sought to be evicted.

19. Though in the above cited case, the issue raised was as to whether a Civil Court had the jurisdiction to entertain a suit which challenged an act under the Rule 18 of the "Settlement Rules framed under the Regulation, the law laid down therein was that an aggrieved could move the Civil Court if the remedy provided by the Regulation was not sufficient and also if the question of title was involved. Basically it appears herein that when the settlement was cancelled, admittedly, without affording any opportunity of hearing before such cancellation, the petitioner's right and interest over the land was at stake for which he had to approach the civil court despite the remedy was being available to him u/s 147 of the Regulation.

20. That being the factual situation, it transpires that such cancellation did amount to rejection of the allotment by which the petitioner was vested with the status of land holder and such action cannot be brought within the purview of Section 154(1)(a) of the Regulation by which the jurisdiction of the Civil Court

has been totally taken away as already noted above. The legislature within its wisdom has inserted the expression mentioned in Section 154(1)(a) of the Regulation without leaving any scope for insertion of any other word like "cancellation" to expand the area of barring the civil court's jurisdiction. Therefore, the cancellation of the settlement as in the case at hand cannot be allowed to be incorporated by way of interpretation of the meaning of the expression appeared in Section 154(1)(a).

21. In view of the above, this Court is of the view that Section 154(1)(a) of the Regulation is not applicable in the instant case to make the civil suit so instituted by the plaintiff/respondent not maintainable and accordingly, this Court finds no illegality in the impugned judgment and decree passed by the appellate Court and the same stands affirmed and upheld.

22. However, this Court finds that the learned appellate Court while allowing the appeal on the question of maintainability ought to have remitted the matter for adjudication of the other remaining issues on merit. That being not done, this case is remitted to the file of the Court of trial Court for proper adjudication of all the remaining issues on merit.

23. Since the parties are represented by their respective counsel during the course of hearing, they are directed to appear before the trial Court on or before 19.3.07 as agreed to by the learned Counsel for the parties to obtain necessary orders.

24. Considering the long pendency of the case, the learned trial Court is directed to make an endeavour to dispose of the entire suit within a period of six month from the date of appearance of the parties.

25. For the foregoing reasons and discussion, the substantial questions of law framed herein are answered accordingly.

In the result, the Second Appeal stands dismissed.

Registry is directed to send down the records immediately.