
(2009) 09 GAU CK 0051
In the Gauhati High Court
Case No : Writ Petition (C) No. 111 of 2008

Rama Paul and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97

Citation : (2010) 1 GLR 64

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : D. Chakraborty and P. Chakraborty, for the Appellant; N.C. Pal, for the Respondent

Judgement

U.B. Saha, J.—By way of filing the instant writ petition, the petitioners sought for a direction to the respondents to pay compensation to the petitioners at the market value for the land mentioned in the Schedule B to the writ petition as well as for a direction to deliver the vacant possession of the said land to the petitioner within a certain period.

2. Heard Mr. P. Chakraborty, Learned Counsel for the petitioners as well as Mr. N.C. Pal, learned Government Advocate for the State respondents.

3. Pleaded case of the petitioners, in short, is as follows:

Mother of the petitioner Nos. 2 and 3 and Mother in law of the petitioner No. 1(a) and Grand Mother of the petitioner Nos. 1(b), 1(c) and 1 (d) Late Hemalata Paul was the absolute owner of the land measuring 32 acre including the land described in the schedule of the writ petition and on her death her right, title and interest of the said land developed upon the petitioner Nos. 2 and 3 and the predecessors of the petitioners Nos. 1(a), 1(b), 1(c) and 1(d) Late Ratan Kr. Paul by inheritance. The Officer-in-charge of Airport Police Station illegally dispossessed the predecessors of the petitioner Nos. 1(a), 1(b), 1(c) and 1(d) Lt. Ratan Kr. Paul and the petitioner Nos. 2 and 3 from the said land in question

measuring 0.32 acres on 17th September, 1985 and aggrieved by the action of the respondent No. 6 they preferred TS No. 95/1987 in the court of Sadar Munisff, Agartala, West Tripura at present re-designated as Civil Judge (Jr. Div.) Court No. 1, Agartala, West Tripura impleading the respondent Nos. 1, 4, 5 and 6 as defendants for declaration of their right, title and interest over the said land and for recovery of khash possession thereof by evicting the respondent No. 6 therefrom and the suit was decreed on 20th July, 1994 and the decree was affirmed by the learned District Judge, in title appeal No. 27/1995 by judgment dated 12th March, 1996 and thereafter the plaintiffs therein filed Title Execution Case No. 01/1995 for recovery of the said land and on 8th August, 1995 the bailiff of the court below went to the decretal land with the survey commissioner for survey of the decretal land including the land described in the schedule of this writ petition measuring 0.14 acre. The bailiff of the court below accordingly delivered the decretal land including the boundary wall of the police station without demolishing the same. When the predecessors of the petitioners attempted to demolish the boundary wall with the help of the bailiff of the learned Executing Court the respondent No. 6 did not allow them to demolish the boundary wall. Thereafter, the bailiff of the learned Executing court submitted report on 8.8.1995 in the learned executing court stating, inter alia, that he delivered possession of the decretal land to the decree holders with the boundary wall standing thereon and on the same day predecessor of the petitioners No. 1(a), 1(b), 1(c) and 1(d) and the petitioners No. 2 and 3 jointly filed an application before the learned Executing Court under Order XXI Rule 97 of the CPC with the prayer for commanding the respondent No. 6 to take necessary steps to demolish the boundary wall, but the learned Executing Court did not pass any order on that application. Against the said order of the learned Executing Court, the predecessors of the petitioners filed a Civil Revision being Civil Revision No. 52/1995 before this hon"ble High Court which was ultimately dismissed and thereafter they instituted a separate title suit being TS No. 30/1998 in the court of Civil Judge. Senior Division, No. 2, West Tripura, Agartala for recovery of the land in question. The said suit was also dismissed. Being aggrieved, they preferred Title Appeal No. 08/2001 which was also dismissed by the Appellate court upholding the decree of the Trial court. Thereafter, a Second appeal being RSA No. 44/2002 was preferred before this Court which was closed by this Court as withdrawn with a liberty to the appellants to approach this Court by instituting a proper proceeding, if law so permits.

4. The respondents by way of filing counter-affidavit challenged the claim of the petitioner in the writ petition and also raised the question of maintainability on the ground that the suit for declaration and recovery of possession filed by the predecessors of the petitioners being TS 95/1997 was decreed by the learned trial court and the decree of the learned trial court was affirmed by the learned appellate court and the same was executed by the learned Executing Court which will be evident from the report of the bailiff wherein he reported that as per the direction of the learned Executing court the possession of the said land was

handed over to the decree holders following the procedure of execution and the decree holders issued receipt being satisfied with the decree being executed correctly. It is also contended that the respondent No. 6, the Officer-in-charge of the Airport Police Station was never found encroaching the land of the predecessors of the petitioners. The fact is that the respondent No. 6 to cause protection of the Police Station Complex, erected the boundary wall on their own government land surrounding the PS complex which is outside the land area of the petitioner. In the counter affidavit, it is also contended by the respondents that as the respondents are not occupying the land of the petitioners there is no question for making any payment as compensation to the petitioners. More so, the subject matter involved in this case was also the subject matter of the civil suit filed by the petitioners earlier, which was accordingly decided by the learned civil court. It is further contended that the boundary wall was never situated in the land of the petitioners and for that reason the respondent Nos. 1, 4 and 6 in their joint written statement clearly stated, "if the wall belongs to the plaintiffs and if they are legally entitled to demolish the same they may take any lawful action in that regard". But the petitioner knowing very well the true situation never ventured to demolish the boundary wall as the same is on the Government khash land and no land of the petitioner is encroached by the respondent No. 6.

5. When the matter is taken up for admission hearing Mr. N.C. Pal, learned Government Advocate raised the question of maintainability. He contended that after execution of the decree by a civil court regarding a particular plot of land, the decree holder of that proceeding has no right to approach the writ court for a direction to claim compensation over the land in question which has already been handed over to the petitioners as plaintiffs by the bailiff of the learned Executing Court. He also contended that the petitioners herein as plaintiffs also filed a second suit before the learned Civil Judge, Senior Division, Court No. 2 for recovery of khash possession of the land in question by demolition of the building, huts and boundary wall standing thereon and removing all obstructions created by the defendants therein, who are the respondents herein and the said suit was registered as TS No. 30/1998. After hearing the parties the learned trial court dismissed the suit vide its judgment dated 6.12.2000 against which the present petitioners preferred appeal being TA No. 08/2001 which was also dismissed on 10.5.2002 by the learned Addl. District Judge, court No. 3 against which the petitioners also preferred a second appeal being No RSA 44/2002 which was subsequently withdrawn by the petitioners. The dispute regarding the land and the boundary wall was the subject matter of the aforesaid civil suit. Therefore, the petitioners in fact tried to get a relief from this Court which was rejected by the learned civil court. Mr. Chakraborty, Learned Counsel for the petitioners tried to satisfy this Court that the subject matter of the civil suit and the subject matter of the instant writ proceeding are different in nature. According to him, in the civil suit there was no prayer from the side of the petitioners for payment of compensation for the land inside the boundary wall measuring 0.14 acres corresponding to 7 gandas 14 dhurs as mentioned in the

schedule B of the writ petition and there was no prayer for delivery of vacant possession of the land in question. Therefore, according to him, the writ petition is maintainable.

6. This Court has gone through the relevant records available before this Court. On scrutiny of the records, it appears that admittedly the civil suit was filed by the predecessors of the petitioner in the year 1987 which was registered as title suit No. 95 of 1987 in the court of Sadar Munisff which is subsequently re-designated as Civil Judge, Junior Division, Court No. 1 for declaration of their right, title and interest over the said land and recovery of Khash possession thereof by evicting the respondent No. 6, i.e., the Officer-in-Charge of the Airport Police Station and the said suit was decreed on 20th July, 1994, which was subsequently affirmed by the learned District Judge in TA No. 27/1995 by judgment dated 12th March, 1996. Thereafter, an execution case being No. 01/1995 was started for recovery of the said land and ultimately the land was recovered and handed over to the predecessors of the present petitioners, who were the plaintiffs in the first suit, by the bailiff of the Executing Court. As the predecessors of the petitioners were not happy they filed a second suit being TS No. 30/1998 in the court of the learned Civil Judge, Senior Division, No. 2, as contended by Mr. Pal, for recovery of the possession of the land in question in the instant writ petition which was ultimately dismissed by the learned Civil Judge, Senior Division. Prayer for recovery of possession of the land in question was also the subject matter in the civil court, and not only that, prayer for demolition of the wall was also the subject matter before the civil court which was ultimately not granted by the civil court.

7. According to this Court, the relief sought for before a civil court if refused, the same cannot be subsequently sought for before a writ court unless a specific case for infringement of a right accrued subsequent to the decision of civil court is established. In the instant case the petitioners' prayer is almost similar to the prayer before the civil court in the civil suit as stated supra except the prayer for compensation. It is not possible for a writ court to decide whether the boundary wall is within the land of the government or the land of the petitioners and more so, when the prayer for demolition of the boundary wall and recovery of the possession of the land in question has already been decided and rejected by a civil court, this Court is of considered opinion that the writ court has no power to give a second thought on the same subject matter to provide relief to the writ court cannot convert itself into an appellate court.

8. For the reasons stated herein above, this Court is of the further opinion that the present writ petition is not maintainable in the eye of law.

Hence, the same is not maintainable.

No order as to costs.