
(2015) 06 GAU CK 0032

In the Gauhati High Court

Case No : Regular Second Appeal No. 27 of 2008

Rupanjali Gogoi and Others

APPELLANT

Vs

Golap Saikia and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : (2015) 3 GLT 325

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : P.K. Goswami, for the Appellant

Final Decision : Dismissed

Judgement

Suman Shyam, J.

1. Heard Mr. P.K. Goswami, learned counsel appearing for the appellants. None appears for the respondents despite receipt of notice in this case.

2. The case of the plaintiffs/ appellants in brief is that the father of the appellants Numal Chandra Gogoi is a permanent resident of Lakhimpur district and has been in continuous possession of a plot of land measuring 2K-10L of village-Khelmati out of a total area of Government land measuring 2 bighas. Since the said plot of land was a low lying land covered by thick jungles, hence, the father of the plaintiff had carried out earth filling work by engaging trucks and had also dug up a pond over the said plot of land. Numal Chandra Gogoi had five sons and one daughter and he continued to possess the aforementioned plot of land by developing the pond into a fishery. Besides, they had also carried out poultry farming and other livestock rearing over the aforementioned plot of land which was under the possession of the plaintiff. Thereafter, the five sons of Numal Chandra Gogoi had applied before the Government for issuance of separate patta to each of them against the 2 bighas of land and the same was pending before the Deputy Commissioner, Lakhimpur for consideration. During the aforesaid

period, the father of the plaintiff had also been paying the touzi revenue for the 2 bighas of land on account of their continuous possession thereof. However, in the year 1985, the Revenue Department stopped collecting touzi revenue from the plaintiff. On 19-09-1996, the defendant had dispossessed the plaintiff and encroached upon 1 katha of land which was under the possession of the plaintiff claiming that the Government had issued patta in respect of the said land in favour of the defendant No. 1. Being aggrieved by such illegal action of the defendant No. 1, the plaintiff had filed the title suit, inter alia, praying for declaration of their right, title and interest over the suit land; recovery of khas possession by evicting the defendant and also for declaration that the settlement issued in favour of the defendant No. 1 was illegal, null and void and for other consequential reliefs.

3. The defendant No. 1 had appeared and contested the suit by filing written statement, inter alia, taking the plea as regards maintainability of the suit on the ground of want of cause of action, suit being barred by limitation, suit being bad for non-joinder of necessary parties. Denying the averments made in the plaint, the contesting defendant stated that Revenue Department of Government of Assam by issuing letter No. RSS-534/85/13, dated 16-10-1985 had settled the suit land in favour of the defendant and the record was corrected accordingly. The defendant further took a stand that it was Numal Chandra Gogoi i.e. the father of the plaintiff who had dispossessed the defendant No. 1 from the suit land for which case No. 12/93-94 under Section 18(3) of Assam Land and Revenue Regulation, 1886 had to be initiated by the defendant No. 1 for eviction of Numal Chandra Gogoi. Ultimately Numal Chandra Gogoi was evicted in connection with the said proceedings whereafter the defendant No. 1 had got settlement vide memo No. LS.III/27/84/49, dated 29-11-1985. It has been pleaded that said Numal Chandra Gogoi preferred an appeal being Appeal No. 19RA(L)(RST) of 1986 before the Board of Revenue against the settlement granted in favour of the defendant No. 1, but the said appeal was also dismissed for non-prosecution. On the basis of the such pleadings the contesting defendant prayed for dismissal of the suit filed by the plaintiffs and at the same time made a counter claim praying for issuance of an order of permanent injunction restraining them from disturbing peaceful possession of the defendant in respect of the suit land.

4. The plaintiffs had filed their written statement against the counter claim made by the defendant No. 1 wherein it had been mentioned that the plaintiff had preferred an appeal before this High Court against the order passed by the Board of Revenue and the said appeal was pending disposal.

5. Based on the pleadings of the parties learned Trial Court had framed as many as eight issues, which are as follows:

- "1. Whether there is cause of action for the suit?
2. Whether the suit is bad for non-joinder of parties?

3. Whether the suit is barred by limitation?
4. Whether the settlement and the patta over the suit land has been given to the defendant by the Govt. of Assam, Revenue Department?
5. Whether the plaintiffs have right, title and interest over the suit land?
6. Whether there was fishing or ponding farm of the plaintiff over the suit land?
7. Whether the defendant is entitled for the decree on his counter claim?
8. To what relief/ reliefs the parties are entitled?"

6. Based on the material evidence available on record and after hearing learned counsel for the parties, the Trial Court had decided issue No. 2 against the plaintiff holding that the suit was bad for non-joinder of State of Assam, which was a necessary party. The learned Trial Court had also decided the issue No. 5 against the plaintiff by holding that plaintiff side had failed to lead any evidence so as to prove and establish their title and possession over the suit land so as to entitle them to a decree as prayed for. Consequently the suit filed by the plaintiff stood dismissed. As regards issue No. 4, 7 and 8 pertaining to the claim made by the defendant, the learned court below had decided all the issues against the defendant thereby rejecting the counter claim made by the defendant No. 1 as well.

7. Being aggrieved by the judgment and decree dated 14-09-2005 passed by the learned Trial Court in Title Suit No. 19/1996 the plaintiffs as appellants had preferred Title Appeal No. 03/2005 in the court of Addl. District Judge (FTC), Lakhimpur on the grounds and reasons mentioned in the memo of appeal. After hearing learned counsel for both the parties, the learned First Appellate Court had dismissed the Title Appeal filed by the appellants/ plaintiffs by holding that the suit filed by the plaintiff was barred under provisions of Section 154 of the Assam Land and Revenue Regulation, 1886 since the appeal preferred by the plaintiff before this Court against the judgment and order passed by the Board of Revenue was still pending and as such the civil court would not be competent to give any decision in respect of the disputed issue involved therein. It was further held that although the plaintiffs have claimed to be in continuous peaceful possession of the suit land and that they were illegally denied settlement of the land yet the learned First Appellate Court had held that since the land was settled with the defendant No. 1 who was put in possession in the year 1985, hence, the plaintiffs were not in possession of the suit land. Such being the position, the relief prayed for by the plaintiff in the suit was barred under Section 154 of the Assam Land and Revenue Regulation, 1886.

8. Being aggrieved by the judgment dated 11-06-2007 and decree dated 14-06-2007 passed by the learned lower Appellate Court in Title Appeal No. 03/2005 dismissing the appeal. The plaintiff as appellant had approached this Court by filing the instant second appeal which was admitted to formal hearing by framing the following substantial questions of law:

"Whether the learned court below was justified in rejecting the claim of the appellant holding that the suit is barred under the provisions of Section 154 of the Assam Land and Revenue Regulation in view of the claim of right title and interest over the suit property?"

9. Mr. P.K. Goswami, learned counsel appearing for the appellant submits that it is settled law that the plaintiff's suit being one based on claim of title over the suit land, the same could not have been dismissed by the learned First Appellate Court merely by holding the same to be barred under Section 154 of the Assam Land and Revenue Regulation, 1886. He, further, submits that learned First Appellate Court did not embark upon any discussion nor recorded any independent finding on the fact as regards other issues in respect of which the learned Trial Court had given a decision. Since a suit of this nature could not be dismissed on the ground of bar contained under Section 154 of the Assam Land and Revenue Regulation, 1886, hence, it was incumbent upon the court below to decide the appeal on merit by recording independent finding in respect of each of the issues based on evidence available on record. Mr. Goswami, therefore, submits that the judgment and decree passed by the First Appellate Court besides being erroneous on the count of incorrect interpretation of Section 154 of the Regulation of 1886, the same is also vitiated for being in contravention of Order XLI Rule 31 CPC.

10. I have considered the submission made by Mr. P.K. Goswami, learned counsel for the appellant and have also perused the materials available on record. On a minute scrutiny of the materials available on record as well as on examination of the judgment and order under appeal what can be seen is that although the plaintiffs have filed the suit seeking declaration of their right, title and interest over the suit land and also for recovery of possession, the appellant/ plaintiff have not been able to produce even an iota of evidence to show that they had title over the suit land. The entire suit of the plaintiff appears to have been based on claim of previous possession. It is not in dispute that the plot of land is a Government land.

11. Based on the evidence on record, both the courts below have concurrently recorded finding of fact that the plaintiffs were not in possession of the plot of land and that possession was delivered to the defendant No. 1 pursuant to the order of settlement issued by the Government in his favour. From the scrutiny of the record it is found that although the defendant have claimed title over the land on the basis of an order of settlement issued by the Government yet, no such order of settlement has been produced on record by the defendant. Be that as it may. It is settled law that plaintiff must succeed on the strength of his own case and success of plaintiff's case would not depend upon the weakness in the case setup by the defendant. There is no doubt about the fact that in the instant case the plaintiffs have failed to lead any evidence so as to prove and establish their title and possession of the suit land. In that view of the matter the suit filed by the plaintiff could not have been decreed by the court below. Under such

circumstances whether the learned First Appellate Court was right in the eye of law in dismissing the suit of the plaintiff on the ground of same being barred under Section 154 of the Assam Land and Revenue Regulation, 1886 would merely be a question of academic interest and therefore, need not be gone into by this Court. An answer to the substantial question of law would be inconsequential in the facts and circumstances of the present case in view of what has been observed hereinbefore.

In view of the foregoing reasons it is held that the instant second appeal is devoid of any merit. In the result this second appeal stands dismissed. However, having regard to the facts and circumstances of the case, there would be no order as to cost.

Registry to send back the LCR.