

(2015) 02 GAU CK 0102
In the Gauhati High Court
Case No : RSA No. 118 of 2009

Samsul Haque Sarkar and Others

APPELLANT

Vs

Jamiruddin Sk. and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Citation : (2015) 4 GLT 624

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : B. Banerjee, Sr. Advocate, for the Appellant; A. Alam, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Suman Shyam, J.—The second appeal is directed against the judgment and decree dated 22.05.2009 passed in Title Appeal No. 01/2009 by the Civil Judge, Kokrajhar, allowing the appeal by reversing the judgment and decree dated 22.12.2008 passed by the Munsiff, Kokrajhar in Title Suit No. 26/2006. The plaintiff's case, as emerges from the record, is that their father, Abdul Sk. was allotted ceiling surplus land measuring 2 bighas 1 kathas and 11 lechas covered by Dag No. 193 and 191, situated in village Sonaludabri in the year 1976 by the Govt. of Assam, since he was a landless cultivator. The plaintiff's case is that the said plot of land on being allotted to their father, remained in his possession all through out his life and after the death of their father, they continued in possession of the land. It is their case that Abdul Sk. never sold the land to anybody, but he himself cultivated on the said plot of land. According to the plaintiffs, the defendants/respondent Nos. 1 to 9 had claimed that they had purchased the suit land by means of registered deeds from Abdul Sk. i.e., the father of the plaintiffs, during his life-time and on the basis of such claim, they are now trying to forcibly enter into the possession of the suit land. Hence, the suit filed by the plaintiffs for declaration of their right, title and interest; for declaration of the sale deed, mortgaged deed, if any, executed by Abdul Sk. in

respect of the suit land as void and for other consequential reliefs. It would be pertinent to note herein that in the plaint, plaintiffs have not prayed for any decree for confirmation of possession, even though they claimed to be in possession in the suit land. The defendants contested the suit filed by the plaintiffs, by filing written statement in the written statement, the appellants/defendants have stated that they had purchased the suit land by means of registered deed of sale executed by Abdul Sk, the father of the plaintiffs, on the strength of which they have been occupying and possessing the suit land as its actual owner. While denying the case of the plaintiff in general, the defendants have asserted that they have got right, title, interest and possession over the suit land and therefore, prayed for dismissal of the suit land. Upon hearing the parties, the learned trial Court framed as many as 4 (four) issues, which are as follows:-

"1) Whether the suit is maintainable in its present form?

2) Whether the plaintiff has right, title and interest over the suit land?

Page 4 of 7

3) Whether plaintiffs are entitled to hold and possess the suit land on the strength of the allotment given to their father by the Govt.?

4) Whether the plaintiffs are entitled to the reliefs as claimed for?"

2. On the basis of the evidence available on record, the learned trial Court answered the issues against the plaintiffs/respondents. As a result of which, the suit filed by the plaintiffs was dismissed by the judgment and decree dated 22.12.2008 passed in Title Suit No. 26/2006.

3. Being aggrieved by the judgment and decree dated 22.12.2008, the plaintiffs/respondents, preferred the Title Appeal No. 01/2009, which was allowed by the impugned judgment and decree dated 22.05.2009. The learned Appellate Court had held that the father of the plaintiff, Abdul Sk, had, infect executed 3 (three) sale deeds, Ex-ka, Ex-kha and Ex-ga dated 22.10.79, 10.04.80 and 15.03.79 respectively, by means of which a total area of land, measuring 1 bigha, 3 kathas 21/2 lechas was transferred in favour of the defendants. It was held that the defendants/appellants could prove the sale deeds, Ex-ka, Ex-kha and Ex-ga. Having held as above, the learned First Appellate Court decreed the suit of the plaintiffs/respondents on the ground that under the Assam Fixation of Ceiling on Land Holdings Act 1956, a person who has been allotted ceiling surplus land would not have any right to transfer the said land, although, the right of inheritance would be available. The aforesaid notion of law appears to be the only basis on which the learned First Appellate Court decreed the suit of the plaintiffs/respondents, notwithstanding the fact that the defendants/appellants had purchased the registered deed of sale by means of which the predecessor in interest of the plaintiffs had sold the suit land to the extent of 1 bigha 3 kathas 2 1/2 lechas in favour of the defendants.

4. At the time of admitting this appeal, this Court had framed 4 (four) substantial questions of law. However, it has been agreed to by the learned counsels for the parties, that the only substantial question of law that would now arise for decision in this case is as to whether learned court below was justified in holding that the father of the plaintiffs have no transferable right in respect of the ceiling surplus land allotted to him by the Govt. of Assam, as being contrary to the provision of Section 16 Sub-Section (2) and (17) of the Assam Fixation of Ceiling on land holdings Act 1956 viz-a-viz Regulation 9 of the Assam Land and Revenue Regulation 1986.

5. Learned First Appellate Court had recorded the categorical finding to the effect that on the basis of the materials available on record, the disputed land was infact sold by Abdul Sk. to the respondents/defendants through registered sale deeds, which were exhibited as proved by the defendants. It may be mentioned here that the defendants claimed to have purchased land, measuring 1 katha 17 1/2 lechas of Daag Nos. 191(ka) and 193(kha) of Village Sonaludbari vide registered sale deed No. 2473/2341 dated 22.10.79 as Ext-ka; land measuring 1 katha 5 lechas of kathian No. 23 dag No. 193(ka) and 191(ka) of village Sonaludbari by registered sale deed No. 1226/1192 dated 10.04.80 (Ext. kha) and further, a plot of land measuring 1 bigha covered by khatian No. 23 of village Sonaludbari by means of registered deed of sale No. 917/902 dated 15.03.1979 (Extga) from Abdul Sk, thereby, totally 1 bigha 3 kathas 2 1/2 lechas of land. The aforesaid claim of the appellants/defendants has been found to be correct by the learned Courts below. However, the claim of the defendants/appellants to the extent that the remaining part of the suit land measuring 2 bigha 1 katha 11 lechas had also been purchased by their sister by means of registered deed of sale from Abdul Sk, was rejected by the trial Court due to lack of evidence. Since, no appeal has been preferred by the defendants/appellants against that part of the judgment passed by the learned trial Court, hence, the same has attained finality in the eye of law and need not be gone into in this appeal.

6. Section 9 of the Assam land and Revenue Regulation provides that a land holder shall have permanent heritable and transferable right of use of occupancy in his land subject to payment of all revenue, taxes, cusses etc. and fulfillment of other conditions mentioned therein. Section 9 of Assam Land and Revenue Regulation, 1986, are as follows:-

"a) The payment of all revenue, taxes, cesses 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."

It is thus apparent that the suit land having been settled with the father of the plaintiffs as provided by the provisions of Assam Land and Revenue Regulation, 1886, he acquired a permanent heritable and transferable right in respect thereof. From a perusal of Section 16(2) of the Assam Fixation of Ceiling on Land Holding Act 1956, it is apparent that the said Section deals with disposal of excess land, payment and the procedure to be followed in that regard and therefore, will not have any application in the facts and circumstances of the case. Learned counsel for the respondents/plaintiffs could not draw the attention of this Court to any other provision under the Act of 1956 or the regulation of 1886 which debars the transfer of any land held by the allottee. In that view of the matter, the learned First Appellate Court clearly erred in law in holding that Abdul Sk. being the father of the plaintiff did not have any transferable right in respect of land transacted by him through the Ext. ka, kha and ga. Such a declaration is completely without any legal basis and as such is not sustainable in the eye of law. As such, the impugned judgment and decree is set aside.

In that view of the matter, the second appeal stands allowed to the extent indicated above. Decree may be prepared accordingly. There will be no order as to cost. LCR be sent back at the earliest.