
(1990) 07 GAU CK 0024

In the Gauhati High Court

Case No : Second Appeal No. 89 of 1982

Shri Produmnya Das Purkayastha and Others

APPELLANT

Vs

Shri Rasendra Kumar Das and Others

RESPONDENT

Date of Decision : 10-07-1990

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 154, 154(1)

Citation : (1990) 2 GLR 412

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : K. Sarma and B.P. Kataky, for the Appellant; A.C. Sarma, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—The sole question of law that arises in this appeal is whether that courts below were Justified in entertaining the suit of the Plaintiff and decreeing the name in view of the provision of Section 154(1)(a) of the Assam Land and Revenue Regulation. 1886.

2. The facts of the case, relevant for disposal of the present appeal, may be briefly stated as follows:

The Plaintiff (Respondent No. 1 herein) had been granted an annual patta in respect of the suit land on 19.12.1961 His case is that since then he was in possession of the said land and had been paying the land revenue During the settlement operation, the Defendants (Appellants herein) put in an objection before the Assistant Settlement Officer claiming the suit land. The Assistant Settlement Officer, hereinafter "A.S.O.", by order dated 27.3.1967 held that the annual patta had been wrongly issued in favour of the Plaintiff. The Plaintiff being aggrieved by the aforesaid order of the A.S.O., cancelling the annual patta earlier issued in his favour, filed a suit in the Court of Munsiff, Nagaon for declaration of his right, title and interest and confirmation of possession over the land covered

by the said annual patta. The Defendants contested the suit on the ground, inter alia, that the suit was not competent. The learned Munsiff, however rejected the objection decreed the suit and granted declaration as prayed for. Appeal against the aforesaid order before the Assistant District Judge No. 1, Nagaon was also dismissed. The Defendants have now come in second appeal before this Court.

3. The only substantial question of law raised In this appeal is whether the learned courts below were correct in decreeing the Plaintiff's suit despite the provision of Section 154 of the Assam Land and Revenue Regulation, 1886, hereinafter referred to as the Regulation.

4. Mr. K. Sarma, learned Counsel for the Appellants, submits that the suit was not maintainable in view of the provisions of Section 154(1)(a) of the Regulation. Section 154(1)(a) reads:

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) questions as to the validity or effect of any settlement, or as to whether the conditions of any settlement are still in force.

The counsel submits that the question raised in the present suit squarely falls under Clause (a) above and, as such a suit in respect thereof is barred. Reliance is placed on a Division bench decision of this Court in Md. Masum v. State of Assam, reported in 1960 ALR 239 (Gau).

5. I have considered the submission and carefully read the decision of this Court in Md. Masum supra. I find sufficient similarity in the facts of the present case and the aforesaid case. In Md Masum, supra, the case of the Plaintiff was that he had an annual patta of the disputed land and he remained in possession under that patta, Under the terms of the patta he was entitled to an automatic renewal unless notice was given to him cancelling the lease, His case was that the annual patta in his favour has been cancelled by the C.D.O. without giving any proper notice. It was under such circumstances that a suit was filed before the civil court. The trial court held that as in effect the Plaintiff was asking for a decree challenging the settlement order of the revenue authorities refusing to renew his patta, such a suit was barred u/s 154(1) of the Regulation. On appeal the decision of the trial court was affirmed. On these facts this Court held that the Plaintiff who was an annual patta holder had no subsisting right in the land. Repelling the contention of the counsel in that case that Clause 3 of the patta not only gave the patta holder a right to get his patta renewed but also a right in the land till it was cancelled, it was observed:

We are not prepared to accept this interpretation of Clause 3 of the patta. In our opinion at the highest it gives him only the right to get the patta renewed after the expiration of the period of one year but it does not give him a right in the land.

6. This Court also rejected the contention that Clause 3 of the patta was an express provision to the contrary giving power to the civil court to entertain the suit. It was held:

Section 154 contemplates an express provision giving power to the civil court to entertain a suit. Clause 3 of the patta only says that he has got a right to get his patta renewed but it does not give any right to the land, nor does it lay down that the civil court in the event of not complying with the terms of that clause will have a right to entertain a suit for a declaration that the renewal was wrongly refused.

In view of the aforesaid, It was held in *Md. Matum*, supra that suit was barred u/s 154(1)(a) of the Regulation.

7. The fact of the present case are similar to those of the aforesaid In that view of the matter the decision given therein governs case also.

8. Mr. A.C. Sarma learned Counsel for the Respondents, relies on a decision of this Court in *Hayat Khan Hazi v. Hayat Khan Hazi*, reported in (sic) Unreported Cases (Assam) 104 and submits that there is conflict between the decision in this case and case referred to above and as such the matter should be referred to a larger Bench. I have gone through these divisions. I do not find any conflict between the two. It appears that Section 154 of the Regulation which bars the jurisdiction of the civil court was not even the subject matter in the decision reported in 1. U.C. (Assam) 104. The counsel further submits that the bar created by Section 154(1) of the Regulation should be read in the light of the decision of the Supreme Court in *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, and a Full Court decision of this Court in *Daulatram Lakhani v. The State of Assam and Ors.* (1989) 1 G.L.R. 131, According to the learned Counsel in view of the aforesaid decision, the bar of Section 154 shall not apply. I have considered the aforesaid decisions. The proposition of law laid down by those two decisions is well settled. However in my opinion these decisions have not in any way effected the validity of the Division Bench decision of this Court in *Md. Masum*, Therefore in view of the facts and circumstances of the present case the language of Section 154(1)(a) of the Regulation and the decision of this Court in *Md. Masum* supra, I am of the clear opinion that the bar of Section 154(1)(a) is attracted in the instant case and the courts below were not justified in entertaining the suit and decreeing the same. In that view of the matter the impugned judgments are set aside.

9. Counsel for the Respondents also submitted that the of bar of Section 154(1) not having been specifically taken by the Appellants before the trial court, it should not be allowed to be raised for the first time in this second appeal. I am not impressed by the aforesaid submission for two reasons, Firstly, it is evident that objection had been taken by the Defendants in regard to maintainability of the suit right from the beginning and secondly the question of the bar to jurisdiction goes to the root of the case, and in my opinion there is no

justification for not entertaining the same, Counsel also submits that the appeal should be remanded to the trial court to frame a specific issue in regard bar of jurisdiction u/s 154 of the Regulation. I am not inclined to accept this submission, as in my opinion, the evidence on record is sufficient to arrive at a conclusion on this question of law.

10. In the result, the appeal is allowed. In view of the facts and circumstances of the case I make no order as to costs.