

(2014) 04 TP CK 0003
In the Tripura High Court
Case No : RSA 60 of 2005

Shri Sadhan Chandra Bal and Others Vs Shri Swapan Datta and Others

Date of Decision : 09-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 3

Citation : (2014) 04 TP CK 0003

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : S.M. Chakraborty, Sr. Advocate., Mr. A. Sengupta, Mr. S. Bhattacharjee, Advocate for the Appellant; B. Das, Sr. Advocate, Mr. Nepal Majumder and Mr. R. Choudhury and Mr. K.K. Pal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This second appeal is directed against the Judgment and Decree dated 13.07.2005, passed by learned Additional District Judge, Belonia, South Tripura in Title Appeal No. 06 of 2005 whereunder the learned Additional District Judge set aside the Judgment & Decree dated 06.04.2005 passed by learned Civil Judge (Jr. Division), Belonia in Title Suit No. 13 of 1981. Heard learned senior counsel, Mr. S.M. Chakraborty for the appellants and learned counsel, Mr. Nepal Majumder for the respondents.

2. The second appeal has been admitted for hearing on the following substantial question of law:-

1. Whether after arriving at a concurrent finding that the identity of the suit land was not clear in the plaint, the learned appellate court below had any scope to grant decree for permanent injunction on the basis of plot number when the land of the defendants were also included in the schedule of the suit land given in the plaint?

2. Whether the learned appellate court below had any jurisdiction in giving finding as to the right, title and interest of the plaintiff over the suit land when the suit was only for permanent injunction and no such prayer was there in the

plaint and the same were categorically denied by the defendants?

3. Himangshu Bikash Datta @ Himangshu Bimal Datta, the predecessor of the present respondents instituted Title Suit No. 13 of 1981 as plaintiff (hereinafter mentioned as "plaintiff") in the Court of the then Munsiff, Belonia inter alia stating that one Annada Prasad Singha Roy was the owner of vast areas of land under jote No. 526 of Mouza-West Pipariakhola, which was recorded in khatian No. 416, C.S. (old) plot No. 610 and out of that land, the said Annada Prasad Singha Roy on 22.04.1968 sold out 7 kanis (2.80 acres) of land to the plaintiff and the plaintiff got physical possession of the land from the vendor. Thereafter, the plaintiff mutated the purchased land in his name and khatian No. 1561 was created in the name of the plaintiff for those 7 kanis of purchased land. The plaintiff grown various kinds of trees on the suit land and on 21.03.1981 A.D. when the plaintiff went to the suit land, the defendants threatened to dispossess him from the suit land and further threatened that the trees grown by the plaintiff in the suit land would be extracted and taken away by the defendants. Plaintiff therefore instituted the suit praying for a decree of permanent injunction restraining the defendants from entering into the suit land.

4. Defendant No. 1 (since deceased), the predecessor of the present appellants, and, defendant No. 2, i.e. the appellant No. 1 jointly filed the written statement inter alia contending that Annada Prasad Singha Roy, the vendor of the plaintiff never owned or possessed any land under jote No. 526 and that the said transaction between the plaintiff and his vendor Annada Prasad Singha Roy was vague. It is contended that defendant No. 1, Rebati Mohan Bal, since deceased got settlement of 5 kanis of land of old jote No. 846 and thereafter, also purchased 10 kanis of land of jote No. 89 and became owner of 15 kanis of land. Subsequently, another 1.20 decimals of land was purchased from Pulin Behari Shil Sharma of khatian No. 757 and they were in possession of the purchased land. It is contended by the defendants that there were discrepancy and contradiction in respect of description of suit land in the plaint because the boundary given was wrong and it was covering the land of the defendants. It is stated that the plaintiff has shown in his southern boundary as the land of Nirada Sundari Majumder whereas in between Nirada Sundari Majumder and the plaintiff there were lands of plot No. 1640 recorded in the name of State of Tripura but in possession of the defendants. The suit land described in the plaint was vague and unidentifiable and hence, the suit is liable to be dismissed.

5. The defendants in their written statement also set up a counter claim, but ultimately, as it appears, the counter claim was abandoned. The Trial Court formulated 7 issues on 03.08.1984 and thereafter, evidence of both side was recorded and by Judgment dated 31.08.1985, the suit was decreed in favour of the plaintiff. The defendants preferred Title Appeal No. 38 of 1985 in the Court of Additional District Judge, Belonia and the learned Additional District Judge by Judgment dated 18.04.1998 allowed the appeal and remanded the case with a direction to frame an additional issue namely, "Has the plaintiff got any cause of

action for the suit?" and further directed that the defendants may make application for appointment of a survey commissioner.

6. After receiving the records back from the Court of Additional District Judge, as it appears, learned Munsiff by order dated 21.01.1992 appointed a Survey Commissioner issuing a writ to determine:-

(i) Whether the suit land appertains Plaintiff's jote No. 526 of Mouja West Pipariyakhola or Defendants' Jote Nos. 864, 89 and 68 of the said Mouja?

(ii) Whether the boundary of the Plaintiff's purchased land is within the suit land?

The survey Commissioner submitted a report, but by order dated 09.03.2000, learned Civil Judge (Jr. Division) rejected the Survey Commissioner's report and directed a fresh Survey Commission. Accordingly, Survey Commissioner, who was appointed afresh submitted a report against which the plaintiff submitted objection, but by order dated 10.12.2003, the Survey Commissioner's report was provisionally accepted and the said order passed by learned Civil Judge (Jr. Division) reads as follows:-

10-12-03. Learned Advocate for both the parties are present.

Today is the date fixed for filing written objection, if any by the parties against the written objection, if any by the Defendants against the Survey Commission Report.

Shri S. Datta, Learned Advocate for the Defendants submitted that Defendants will not submit any objection against the Report of the Survey Commissioner and the report may be accepted.

On the other hand learned Advocate for the plaintiffs opposes to accept the report of the Survey Commissioner and prayed for rejecting the same.

Considered and perused the entire case record to which it reveals to me that for the same purposes Survey Commission held twice and in such circumstances I am not inclined to appoint any fresh survey commission considering the long pendency of this suit for the year 1981 and thereby report of the survey commissioner is accepted provisionally which may be considered at the time of argument and delivery of judgment taking into consideration to the report of the previous Survey Commissioner.

Thus objection stands rejected.

Parties are to prepare themselves to argue the case on the next date.

Fix 13.01.2004 for argument.

7. As per order of the learned Additional District Judge, as stated above, an additional issue was also framed. Thereafter, learned Civil Judge (Jr. Division) passed the impugned Judgment dated 06.04.2005 and dismissed the suit.

8. Aggrieved, the plaintiff preferred Title Appeal No. 06 of 2005 which was allowed by the learned Additional District Judge, Belonia. Hence the present second appeal.

9. Learned senior counsel, Mr. Chakraborty has submitted that the Trial Court as well as the Appellate Court arrived at a concurrent finding that the description of the suit land as per the boundary given in the plaint was not correct and while the boundary was found to be not correct, the First Appellate Court should not have decreed the suit based on the survey plot numbers of survey settlement records. It is also contended by learned senior counsel, Mr. Chakraborty that the Commissioner's report has been considered by the Trial Court wherein it is clearly mentioned that the defendants were in possession of part of the suit land and so, there cannot be a permanent injunction against the party in possession. He has also submitted that the Appellate Court made out a third case and decreed the suit ignoring the evidence on record.

10. On the contrary, learned counsel, Mr. Majumder, appearing for the respondents has submitted that the Judgment passed by the Trial Court is nothing but a hodgepodge since the Trial Court at one stage rejected Survey Commissioner's report, but at another stage taken into consideration the Survey Commissioner's report to conclude that the plaintiff was not in possession. The Survey Commissioner's report was not finally accepted and no scope was given to cross-examine the Survey Commissioner since the case was old pending. The Trial Court passed order observing that for the report of the Survey Commissioner, the case cannot be kept pending anymore and therefore, Survey Commissioner's report was provisionally accepted subject to consideration of evidence on record. It is also contended that the plaintiff has proved his case by adducing on record his title deed and khatian prepared in his name pursuant to the title deed which was long prior to the purchase of the land by the defendants and so, the Appellate Court rightly decreed the suit. It is again contended that the defendants admitted that in between Nirada Sundari Majumder and the plaintiff, there was a plot of khas land, but subsequently, it was occupied by the defendants. For this negligible discrepancy, the suit of the plaintiff cannot be dismissed. It is further submitted that the plaintiff prayed for permanent injunction based on his title and possession and therefore, the First Appellate Court rightly decreed the suit.

11. The plaintiff described the suit land in the schedule of the plaint thus:-

SCHEDULE OF THE SUIT LAND

All those 7 kanis equivalent to 2.82 acres of land situated at Mouja West Pipariyakhola, under Barpathari Tahshill Kachari, comprises in Khatian No. 1561(1610).

BOUNDARIES OF SUIT LAND

North:-Road; South Nirada Sundari Majumder, East:-Defendant Nos. 1 & 2,

West:-Hantu Singh Tripura, within these boundaries in CS (Old) Plot Nos. 610/4799; 610/4800/610/4801 land measuring about 2.82 acres.

12. It is evident that the plaintiff described the suit land both by boundary and survey plots. Order VII Rule 3 of the CPC prescribes that the immovable property may be described either by boundaries or by the numbers in the records of settlement or survey. Rule 3 of Order VII reads as follows:-

3. Where the subject-matter of the suit is immovable property.-Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

13. A bare reading of the schedule to the plaint, as reproduced hereinabove, makes it abundantly clear that the plaintiff described the suit land both by boundary and by survey plot number. Measurement of the land has also been given very clearly and specifically.

Learned senior counsel, Mr. Chakraborty for the appellants has seriously criticizes the Appellate Judgment on the ground that the Appellate Court ignored the defect in respect of description of the suit land in its Southern boundary and decreed the suit wrongly on survey plot which is not tenable in law. It is contended by Mr. Chakraborty, learned senior counsel that if there is a conflict between the boundary and survey plot number, the description by boundary shall prevail and while the suit cannot be decreed on the basis of the boundary description, it ought to have been dismissed which the Trial Court rightly did. In support of his contention, learned senior counsel also referred the Judgment of Subhaga and Others Vs. Shobha and Others,

The suit land has been described both by survey plot number and by the boundary. I have already quoted hereinabove the provisions prescribed in the CPC that subject matter of the suit of immovable property may be described by boundary or by survey plot.

The Apex Court in the case of V.O. Tractoroexport, Moscow Vs. Tarapore and Company and Another, has held that a statute should not be construed as a theorem of Euclid but the statute must be construed with some imagination of the purpose which lies behind the statute. The doctrine of liberal interpretation is not always the best method for ascertaining the intention of Parliament. The better rule of interpretation is that a statute should be so construed as to prevent the mischief and advance the remedy according to the true intent of the makers of the statute.

It is no doubt transpired in the evidence that the Southern boundary of the suit land, so far given by the plaintiff in the Schedule of the plaint is not correct. In between Nirada Sundari Majumder, who has been described as the Southern boundary land holder and the plaintiff, there are lands of plot No. 4391 and 6636

which belonged to the defendants. It is clearly brought on record that the plaintiff purchased 7 kanis of land from the original jotedar Annada Prasad Singha Roy and the title deed in the name of the plaintiff stands good. The plaintiff mutated the purchased land in his name and khatian has been prepared for the purchased land with specific plot numbers. The learned Appellate Judge decreed the suit considering the plot numbers given in the schedule of the plaint. There is no quarrel that if there is a conflict between survey plot number and the boundary, boundary shall prevail. In this suit, the Southern boundary description of the suit land is not correct, but so far as the survey plot number and quantum of land, there is no controversy. Had the plaintiff tried to grab the defendants land by way of giving a false boundary, the case ought to have been otherwise. The defendant in his evidence clearly admitted that plaintiff purchased 7 kanis of land from Annada Prasad Singha Roy and thereby, admitted the case of the plaintiff. Under such circumstances, I find no justification at all to agree with the submission of learned senior counsel, Mr. Chakraborty that for the fault of Southern boundary description, the entire suit of the plaintiff should fail. The Supreme Court in the case of Subhaga And Others (supra) has held that a property can be identified either by the boundary or by any other specific description and further held that if there was any discrepancy, normally, the boundary should prevail. There is no quarrel on the principle laid down by the Apex Court on the issue, but where the suit property can be ascertained either by the boundary or by survey plot, in my considered opinion, there is no bar to decree a suit on the basis of survey plots, specially in a case where the suit was instituted and contested at Mufassil Court. The argument of learned senior counsel, Mr. Chakraborty, therefore, merits no consideration in the given facts and circumstances of the suit.

14. The Trial Court in its Judgment has taken into consideration the description of the suit land in the Southern boundary and taking note of the fact that in between Nirada Sundari Majumder and the plaintiff there were lands of plot No. 4391 and 6636 which allegedly belonged to the defendants and on that ground decided issue No. 2 against the plaintiff and consequently dismissed the suit. The Appellate Court considered the fact in Para 6 and 7 of the Judgment which may be gainfully quoted here as follows:-

6. From the oral and documentary evidence, it is clear that the plaintiff-appellant entered into the possession of the suit land which he purchased from Annada Prasad Singha Roy and his predecessor Annada Prasad Singha Roy had title over the land under old dag No. 610, khatian No. 416. Exbt. 1 shows that Annada Prasad Singha Roy was the original owner of the plot. Exbt. 3 new khatian affirmed the transfer of title in the name of Himangshu Bimal Datta and his possession is thereon. Exbt. 4 revenue receipt affirmed the fact of payment of land revenue by the plaintiff. All these facts clearly shows that plaintiff acquired right, title and interest over the land under khatian No. 1561(1610), dag No. 610/4799, 610/4800 and 610/4801 for land measuring 7 kani.

Defendants herein-after called respondents also purchased land under jote No. 864. In the written statement, para-11, defendants-respondents clearly stated that their land falls under old jote No. 864 not under 610 which was owned by Annada Prasad Singha Roy. The land of the defendant-respondents was under Taluki jote No. 89 and subsequently khatian prepared in their name vide khatian No. 1094. Defendants-respondents produced the khatians No. 1442 in the name of Sadhan Ch. Bal, Dulu Rani Bal Exbt. 0 and khatian No. 1559 in the name of Rebati Mohan Bal, Khatian No. 569/3 in the name of Rebati Mohan Bal, Khatian No. 742/1 Exbt. R in the name of Sadhan Ch. Bal, Samar Ch. Bal, Amar Ch. Bal, Khatian No. 742/2 in the name of Sadhan Ch. Bal and khas land of khatian No. 778 Exbt. T. The kabuliot in the name of Rebati Mohan Bal Exbt. A and the sale deed executed by Pulin Behari Shil Sharma described separate land and not tallied with the land as described by the plaintiff-appellant. By Exbt. D sale deed the same bearer Annada Prasad Singha Roy who sold out 7 kani land to plaintiff-appellant and also sold out 670 decimal tila land to the defendants-respondents Sadhan Ch. Bal, Samar Ch. Bal, Bimal Ch. Bal, Janardhan Bal and others. This 70 decimal land was under khatian No. 416, dag No. 610. From the same dag, plaintiff-appellant also purchased 7 kani land. Admittedly, the plot No. 610 is a big area Taluki land, it consists 98 acres of land. From the same jote plot, both the plaintiff-appellant and respondents-defendants purchased the land. One purchased 7 kani in the year 1968 and other purchased 1 kani 15 ganda in the year 1980. The boundary given in the deeds are totally different and respondents-defendants claiming the land of the plaintiff-appellant without proper identification of their land. That 70 decimal land is recorded in R.S. plot No. 4406 and those are not at all the land of Himangshu Datta, plaintiff-appellant of this suit.

7. Learned Court below while deciding the issue No. 2 considered the survey settlement map and come to the conclusion that that aggregate land under the boundary as described in the plaint consists more than 7 kani land. The land of the defendant Nirada Sundari Majumder are included in the boundary. From the scrutiny of the settlement map, he came to the conclusion that Annada Prasad Singha Roy while selling the property to the plaintiff did not give proper boundary of the transferred land and so some misunderstanding arose. Quantum of land was 7 kani, but the boundary is shown for more land. Defendant's land also shown within that boundary. The land of Hantu Singh Tripura is situated in the Western side of the land of defendants and 70 decimal land sold out by the same vendor Annada Prasad Singha Roy to the respondents-defendants were also within the boundary of the land as described by the plaintiff-appellant. For this reason Ld. Court below refused to give injunction and case of the plaintiff failed. Ld. Court below in this regard failed to appreciate that boundary is not the last word while coming to the conclusion about the right, title and interest over a property.

Order 7 Rule 3 of the C.P.C., it is clearly stated that property can be identified by boundaries or numbers of any record of settlement of survey. The plaint shall

specify such boundaries or numbers. Here in this instant case, plaintiff-appellant described the suit property by boundary and also by the numbers in the record of settlement. As the numbers in the record of settlement is correctly given and not countered by any evidence and no confusion arose in regard to the quantum of land and its mutation by publication of record of right vide khatian No. 1561. So, the plaintiff-appellant who apprehends an invasion on his title may get a relief from the Court of equity & justice. The Court below failed to appreciate this fact and decided the issue against the plaintiff-appellant. It is true that plaintiff-appellant is not entitled to get injunction in respect of property described by the boundary, but he is entitled to get perpetual injunction for the property described by the numbers, and plot as given in the plaint.

15. The Trial Court, as it appears in Para 6 of the Judgment taken into consideration the two points which were formulated while issuing the writ to the Survey Commissioner and decided those points as if those were issues framed in the suit and while deciding the same in Para 6, he has arrived at a clear finding- "So in my considered view, the report of the Survey Commissioner in no way help this Court to take decision over the issue." In the same paragraph, in another place, the Trial Court has held that he has taken into consideration the Survey Commissioner's report in respect of the observation regarding possession of the defendants in some plot numbers mentioned in the Survey Commissioner's report. I have examined the Survey Commissioner's report, which is found on record. The report is not in conformity with the writ issued by the Court. So, it should be either accepted or rejected as a whole. While the Trial Court decided that the Survey Commissioners report was not at all to help in deciding the suit, the Trial Court would not have considered it for other purpose. It is difficult to make out any head and tail of the Judgment passed by the learned Trial Judge. In my considered opinion, the Appellate Court has correctly evaluated the pleadings and the evidence on record and arrived at a correct finding.

16. The defendant No. 2 in his cross-examination clearly admitted that the plaintiff purchased 7 kanis of land from Annada Prasad Singha Roy. The defendants also purchased certain area of land from the said Annada Prasad Singha Roy. The plaintiff proved the title deed, the finally published khatian in the name of Annada Prasad Singha Roy and the khatian which was prepared in the name of the plaintiff after his purchase of the land and the trace map of the survey plots created in his name. So, the plaintiff has clearly proved his case for the purpose of a decree of permanent injunction against the defendants. I cannot agree with the submission of learned senior counsel, Mr. Chakraborty that in the absence of any prayer of decree of right, title, interest, there cannot be a decree of permanent injunction. While the plaintiff has established his title and possession over the suit land, his suit should not be dismissed only on the ground of a discrepancy in the boundary description in one side of the suit land. Mufassil pleadings should be always read with some concession. The discrepancy what is very seriously noted by the Trial Judge in dismissing the suit has been

rightly considered as negligible by the Appellate Court and the Appellate Court rightly decreed the suit on the basis of survey plot numbers, which deserves no interference.

17. The plaintiff instituted the suit only for permanent injunction. The Appellate Court set aside the judgment and decree of dismissal passed by the Trial Judge and decreed the suit with the following observation:-

10. In view of my above findings over the issues, the judgment and decree passed by the Court below is set aside. It is ordered and decreed that the plaintiff-appellant is entitled to get decree of permanent injunction against the defendants-respondents for the land measuring 7 kani under khatian No. 1561, dag No. 610/4799, 610/4800 and 610/4801. The respondents defendants and their agents are permanently restrained to enter into the suit land as described by plot No. and khatian No. for the land measuring 7 kani.

Parties are to bear their own cost.

Send back the L.C. record along with a copy of this judgment.

The case is thus disposed of accordingly. Announced.

18. There is nothing in the Judgment passed by the Appellate Court that the decree has been passed beyond the prayer of the plaintiff made in the plaint. So, I find nothing to discuss on the second substantial question of law.

19. The original suit was instituted in the year 1981. 33 years have elapsed in the mean time. There must be an end of litigation. The Supreme Court in the case of Gurdev Kaur and Others Vs. Kaki and Others, has held that-"In judicial hierarchy finality is absolutely important because that gives certainty to the law." In the present case, the parties knocking the doors of Courts at different level for about three decades. Originally, the suit was instituted by one plaintiff against two defendants. The plaintiff and one of the defendants died in the mean time and they could not see the ultimate result of the suit. So, there must be an end of the litigation. The plaintiff proved his right, title, interest and possession over his purchased 7 (seven) kanis of land recorded in the ROR in his name. The Appellate Court passed decree for the said quantum of land as per the survey plot numbers. The litigation, therefore, between the parties, may be set at rest.

20. In view of the discussions made above, the appeal is found to be devoid of any merit and accordingly, it stands dismissed. Judgment and decree passed by the learned Additional District Judge in T.A. No. 06 of 2005 is upheld. Send back the L.C. records along with a copy of this Judgment.