

(1987) 11 GAU CK 0013

In the Gauhati High Court

Case No : Civil Revision No. 131 of 1983

Shri Sankar Goala and Others

APPELLANT

Vs

Shri Mufizuddin and Others

RESPONDENT

Date of Decision : 25-11-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Specific Relief Act, 1963 — Section 6, 6(4)

Citation : (1988) 1 GLR 257

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : M.A. Laskar and N. Mahammad, for the Appellant; S.A. Laskar and B.A. Sarkar, for the Respondent

Judgement

S.N. Phukan, J.—This petition u/s 115 of the CPC is directed against the judgment and decree dated 16.5.83 passed by the learned Munsiff No. 1, Hailakandi in Title Suit No. 78 of 1982.

2. The Opp. party No. 1 as Plaintiff filed the suit is question before the learned trial Court u/s 6 of the Specific Relief Act, 1963, hereinafter, the Act.

3. Briefly stated, it was alleged by the Plaintiff that the suit land was acquired by the Government of Assam from the owners of Kanchanpur Tea Estate as the land in question was a part of the ceiling surplus land and thereafter it was allotted to the Plaintiff-opp. party No. 1 by the Government. The possession of the land was also delivered by the Land Revenue (sic) of the Government to the Plaintiff opp. party. It is alleged, (sic) on 3.3.82, the present Petitioners who were impleaded as Respondent dispossessed the Plaintiff from the land and accordingly the suit in questions u/s 6 of the Act was filed. The suit was duly contested and on the pleadings, the learned trial Court framed the following issues:

1. Whether the suit is maintainable in its present form?

2. Whether the suit is barred by limitation?

3. Whether the Plaintiff has any title and possession on the S/L?
4. Whether the suit is bad for non-joinder of parties?
5. Whether the suit land is used as grazing and burial ground by the public?
6. Whether the suit land was ever settled with the Plaintiff by the Govt. of Assam, or possession was delivered to him?
7. To what relief, if any, the Plaintiff is entitled?

4. The learned trial Court after recording his findings decreed the suit. Mr. Laskar, learned Counsel for the opp. party states at the Bar that the decree has already been executed and the Plaintiff is in possession of the suit land residing therein.

5. Mr. Noormahammad, learned Counsel for the Petitioners has urged that the suit being a suit u/s 6 of the Act the learned Court erred in law by deciding the title of Plaintiff. Mr. Muhammad submits that by doing so, the learned trial Court has acted in the exercise of its jurisdiction illegally and with material irregularity and as such the decree liable to be set aside. On the other hand Mr. Laskar submits that the main point regarding dispossession of the Plaintiff from the suit land has been rightly decided by the learned Court after taking into consideration the entire evidence record and this Court need not interfere with the said findings. Mr. Laskar however, fairly concedes that it was not necessary on the part of the learned trial Court to decide the question regarding title in view of Sub-section (4) of Section 6 of Act.

The said Section 6, inter alia provides that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof notwithstanding any other title that may be set up in such suit. Sub-section (4) farther provides that this section shall not bar any person from suing to establish his title to such property and to recover possession thereof.

6. It is clear that the object of Section 6 of the Act is to discourage people from taking law into their own hands however, good their title may be. By this section a person is prevented from ousting any person from possession except by due process of law. Reading the section as a whole it is clear that while deciding the question of possession the trial Court need not examine the title of the parties and the procedure provided under the said section is for summary and speedy remedy through Civil Court for restoration of possession. The provision of the section is absolutely clear that the parties are left to fight out the question of their respective title in a separate civil proceeding.

7. In view of the above position of law it is clear that the decision of the learned trial Court regarding title of the Plaintiff-opp. party was without jurisdiction and it cannot stand. That apart as in the present proceeding the Petitioners were not supposed to prove their title if the said finding of the learned trial Court is allowed to remain, the Petitioners shall suffer irreparable loss as they would be

prevented from agitating the matter in a separate civil suit. This position is not disputed at the Bar.

8. The dispossession of the Plaintiff-opp. party from the suit land is not disputed. I have pursued the judgment of the learned trial Court and learned trial Court rightly considered the evidence of the revenue staff and also the neighbouring witnesses in coming to the conclusion that the Plaintiff-opp. party was in possession of the land and that he was dispossessed by the present Petitioners. The learned trial Court rightly rejected the evidence adduced on behalf of the Defendant Petitioners. This Court sitting in revision need not re-appreciate and re-appraise the findings of the learned trial Court as the said findings are based on appreciation of evidence and not perverse.

9. From what has been stated above, I bold that the finding of the learned trial Court regarding dispossession of the Plaintiff-opp. party and passing a decree for putting him back into the possession need not be disturbed. However, the findings, of the learned trial Court regarding the title over the suit land of the parties cannot stand and said finding is liable to be quashed which I hereby do. The parties are at liberty if so advised, to agitate this matter in the appropriate forum.

10. With the above direction and modification judgment and decree of the learned trial Court are upheld.

The petition is disposed of accordingly. No costs.