
(2012) 07 GAU CK 0026

In the Gauhati High Court

Case No : Regular Second Appeal No. 7 of 2002

Sri Nirmal Chandra Bhowmick and Others

APPELLANT

Vs

Md. Sultan Ali @ Ahmed and Others

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Citation : AIR 2012 Guw 175

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : B.C. Das, Mr. P.C. Dey, Ms. S. Roy and Ms. M. Basar, for the Appellant; A.C. Sarma, Ms. A. Dev, P. Chakravorty and Mr. K. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey

1. This appeal by the successors-in-interest of the original plaintiff, Prafulla Kumar Bhowmick, is directed against the judgment and decree dated 6.9.2001 passed by the learned Civil Judge (Senior Division), Morigaon in Title Appeal No. 4/1999, whereby and whereunder the appeal preferred by the defendant No. 1(c), 1(d), 2(b), 2(e), 5, 6 and 9(c) has been partly allowed by setting aside the decree passed by the trial court dated 13.8.1997 in Title Suit No. 41/1993 (earlier No. 118/1977), by the learned Civil Judge (Junior Division) Morigaon, (now Munsiff) in so far as it relates to the decree in respect of the land measuring 19 bighas 1 katha 4¹/₂ lechas, which was transferred by defendant Nos. 8 and 9 in favour of defendant No. 1 by two registered deeds of sale being Ext. "Ka" and Ext. "Kha" dated 19.12.1972 and 2.1.1973 respectively. The predecessor-in-interest of the present appellants instituted Title Suit No. 118/1977 in the court of the learned Assistant District Judge, Nagaon (now Civil Judge) which suit was subsequently transferred to the court of the learned Civil Judge (Junior Division) Morigaon and renumbered as Title Suit No. 41/1993, claiming right, title and interest in respect of 13 bighas 2 kathas 9 lechas of land,

more fully described in Schedule "Ka" to the plaint and also for recovery of khas possession, contending inter alia that initially annual patta No. 48 in respect of the land measuring 41 bighas 7 lechas was issued in favour of the plaintiff and his brother i.e. proforma defendant No. 10, Atindra Bhowmick and the defendant Nos. 8 and 9 i.e. Sarada Kumar Mazumdar and Barada Kumar Mazumdar and thereafter the Govt. declared the land covered by Dag No. 228 as khas land and in respect of the remaining land of 38 bighas 2 kathas 9 lechas, which is the suit land, periodic patta was issued being No. 4 in the name of the plaintiff. It has further been contended that as the names of the defendant Nos. 8 and 9 and proforma defendant No. 10 was wrongly entered in the revenue record, in respect of the periodic patta, their names were struck off from the records by the Sub Deputy Collector by order dated 5.6.1973. The plaintiff claims that the principal defendants illegally and forcibly dispossessed him from the part of the suit land on 1.7.1974 and thereafter during pendency of the suit he was dispossessed by the said defendants from the entire suit land. According to the plaintiff, the defendants have no right over the suit land the same being converted to periodic patta in the name of the plaintiff and his right having been clouded by the defendants by their action, he has filed the suit as aforesaid.

2. The suit was contested by the defendant No. 1, 3, 5, 6, 8, 9(ka), 9(kha) and 9(ga) by filing joint written statement contending inter alia that periodic patta No. 4 in respect of 38 bighas 2 kathas 9 lechas was issued in favour of the plaintiff, proforma defendant No. 10 and the defendant Nos. 8 and 9. It has also been contended that while the plaintiff and the proforma defendant No. 10, who are the brothers, have right over half of the suit land, the defendant Nos. 8 and 9 had right over the remaining land, i.e. 19 bighas 1 kathas 4¹/₂ lechas, which land the defendant Nos. 8 and 9 have transferred in favour of the defendant No. 1 by Exts. "Ka" and "Kha" sale deeds. It is the farther case of the defendants that they sold different plots of land to the defendant Nos. 5 and 6 and after such sale the defendant No. 1 continued to possess 7 bighas 15 lecahs of land along with the defendant No. 3. The defendant Nos. 2, 4 and 7 have also claimed that their right over 19 bighas 1 kathas 4¹/₂ lechas of land belonging to the plaintiff and the proforma defendant No. 10, has ripen by right of adverse possession since they are possessing the suit land openly and denouncing the title of the lawful owner.

3. The trial court on the basis of the pleadings of the parties framed the following issues for determination: -

1. Whether the plaintiff has any cause or action for the suit?
2. Whether the suit is bad for defect of parties?
3. Whether the suit is properly valued and the plaint is properly stamped?
4. Whether the suit is barred by limitation and waiver, estoppel and acquiescence?
5. Whether the plaintiff has got right, title and interest in the suit properties?
6. To what relief, if any, are the parties entitled?

4. The learned Munisff, Morigaon initially decided the suit partly in favour of the plaintiff and partly in favour of the defendants vide judgment and decree dated 26.7.1994, which was put to challenge by the plaintiff in Title Appeal No. 17/1994 before the learned District Judge, Morigaon. The said appeal was allowed vide judgment and decree dated 3.7.1996 by remanding the case for retrial after setting aside the judgment and decree passed by the learned Munsiff. On remand the suit of the plaintiff was decreed by the learned Munsiff in its entirety vide judgment and decree dated 13.8.1997 (decree drawn on 21.8.1997), declaring the right, title and interest of the plaintiff in respect of the entire suit land measuring 38 bighas 2 kathas 9 lechas. The appeal preferred by the aforesaid defendants thereafter has been allowed as aforesaid. Hence the present appeal.

5. The appeal was admitted for hearing vide order dated 6.2.2002 on the following substantial questions of law: -

1. Whether in view of the fact that the periodic patta stood in the name of the plaintiff but the land was sold by the defendant Nos. 8 and 9 to the defendant No. 1, the learned lower appellate court was Justified in holding that the plaintiff cannot claim the declaration of right, title and interest over the suit land without seeking the relief of cancellation of the sale deeds?

2. Whether in view of the fact that the annual patta was converted into periodic patta in the name of the plaintiff who paid the premium and the revenue but the names of defendants Nos. 8, 9 and 10 were entered illegally and so subsequently cancelled the learned lower appellate court was Justified in holding that cancellation of their names from and mutation of the plaintiffs name in the suit patta was illegal?

3. Whether on the pleadings the materials on record the learned lower appellate court was Justified in holding that since the sales by the defendants Nos. 8 and 9 were made prior to cancellation of their names from the suit patta it would confer valid right, title and interest upon the vendee, the defendant No. 1 ?

6. I have heard Mr. Dey, learned counsel for the appellant and Mr. AC Sarma, learned counsel appearing for all the respondents including the proforma respondents.

7. The learned counsel for the appellants referring to the Ext. 1, Jamabandi and also the order dated 5.6.1973 passed by the Sub Deputy Collector submitted that since it is apparent from the aforesaid documents that the annual patta was converted to periodic one in the name of the predecessor-in-interest of the present appellants alone, who was the plaintiff, the first appellate court ought not to have partly allowed the appeal by partly setting aside the judgment and decree passed by the learned trial court when the defendant Nos. 8 and 9 had no right, title and interest in respect of half of the suit land after conversion of the annual patta into periodic one in the name of the plaintiff. The learned counsel submits that since the defendant Nos. 8 and 9 have no right over the half of the

suit land the other defendants also cannot claim the right over the suit land by purchase from the defendant Nos. 8 and 9.

8. Mr. Sarma, the learned counsel appearing for the respondents on the other hand drawing attention of the Court to Ext. 1 Jamabandi has submitted that it is apparent therefrom that annual patta was issued in the name of four persons namely the original plaintiff, the proforma defendant No. 10 and the defendant Nos. 8 and 9 and the said patta was also converted to periodic in the name of all four persons. It has also been submitted that it also appears from the judgments and decrees passed that the defendant Nos. 8 and 9 had right over the half of the land measuring 38 bighas 2 kathas 9 lechas, which land they have sold in favour of the defendant No. 1 vide Ext. "Ka" dated 19.12.1972 and Ext. "Kha" dated 2.1.1973 and by virtue of such purchase the defendant No. 1 had acquired right, title and interest in respect of 19 bighas 1 katha 4¹/₂ lechas of land. Mr. Sarma further submits that the defendant No. 1 had thereafter sold certain plots of land out of the said land in favour of the defendant Nos. 5 and 6. Referring to the cancellation of the names of the proforma defendant No. 10 and defendant Nos. 8 and 9, it has been submitted that the Sub Deputy Collector vide Ext. 8 order dated 5.6.1973 cancelled the names of the said defendants after execution of the sale deed being Ext. "Ka" and Ext. "Kha" and such cancellation of the mutation is also contrary to Ext. 1 jamabandi. The learned counsel, therefore, submits that the first appellate court has not committed any illegality requiring any interference by the second appellate court as no substantial question of law exists in the case in hand.

9. As noticed above, the suit of the plaintiff was decreed by the trial court in its entirety declaring his right, title and in respect of 38 bighas 2 kathas 9 lechas of land. The first appellate court, however, by the impugned judgment and decree set aside the part of the decree passed by the trial court i.e. in so far as it relates to the land measuring 19 bighas 1 katha 4¹/₂ lechas which was transferred by the defendant Nos. 8 and 9 in favour of the defendant No. 1 by Ext. "Ka" and Ext. "Kha". The first appellate court, however, confirmed the decree in respect of the remaining 19 bighas 1 katha 4¹/₂ lechas of land decreeing the right, title and interest of the plaintiff and recovery of khas possession of the said portion of the land.

10. Ext. 1 Jamabandi, which was proved by the plaintiff, reveals that the annual patta was initially issued in the names of four persons namely the plaintiff, the proforma defendant No. 10, Atindra, who are brothers and the defendant Nos. 8 and 9 namely Sarada Kumar Mazumdar and Barada Kumar Mazumdar. The said annual patta, as it appears from Ext. 1 Jamabandi, was converted to periodic patta vide order dated 11.11.1968, in the name of all the aforesaid four persons. It is in the evidences that the said periodic patta No. 4 was issued in respect of 38 bighas 2 kathas 9 lechas of land. It is also in the evidences that half of the said land measuring 38 bighas 2 kathas 9 lechas belonged to Sarada Kumar Mazumdar and Barada Kumar Mazumdar and the remaining land belonged to

Prafulla Kumar Bhowmick and Atindra kumar Bhowmick, the plaintiff and the proforma defendant No. 10 respectively. Sarada Kumar Mazumdar and Barada Kumar Mazumdar, the defendant Nos. 8 and 9, transferred their share of land, i.e. 19 bighas 1 Katha 4? Lechas, in favour of the defendant No. 1 vide two registered deeds of sale, i.e. Ext. "Ka" dated 19.12.1972 and Ext. "Kha" dated 2.1.1973. The Sub Deputy Collector, however, vide order dated 5.6.1973 (Ext. 8) on the basis of the application filed by the plaintiff cancelled the names of Atindra, proforma defendant No. 10 and Sarada and Barada, defendant Nos. 8 and 9 from the periodic patta No. 4 which was done after the aforesaid sale deeds, Exts. "Ka" and "Kha" were executed by defendant Nos. 8 and 9. Though the plaintiff has claimed that after such cancellation order was passed, patta was issued in the name of the plaintiff, he, however, could not demonstrate that the patta was issued in his name. Ext. 8 Jamabandi was issued in the names of the aforesaid four persons, plaintiff, proforma defendant No. 10 and the defendant Nos. 8 and 9. Such cancellation of names from revenue record would not extinguish the right of defendant Nos. 8 and 9 over half of the suit land.

11. There being evidences on record, as noticed above, that Sarada and Barada, defendant Nos. 8 and 9 have right, title and interest in respect of half of 38 bighas 2 kathas 9 lechas i.e. 19 bighas 1 kathas 4? lechas, the defendant No. 1 have acquired right, title and interest by virtue of purchase vide registered sale deeds dated 19.12.1972 and 2.1.1973, Exts. "Ka" and "kha" respectively. The defendant No. 1 also sold part of the suit land in favour of the defendant Nos. 5 and 6 by registered deeds of sale.

12. In view of the aforesaid discussion, I am of the view that the first appellate court has rightly allowed the appeal by partly setting aside the judgment and decree passed by the trial court.

13. The appeal is accordingly dismissed with no order as to cost. The Registry is directed to send down the records.