
(2013) 01 CAL CK 0058
In the Calcutta High Court
Case No : S.A. 54 of 1993

Sri Shri Hari Patra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

West Bengal Estates Acquisition Act, 1953 — Section 10(2), 4, 5, 6, 6(1)

Citation : (2013) 2 CHN 378

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : P.B. Sahoo, Mr. Sudhakar Biswas and Mr. Balaram Neogi, for the Appellant; Sankar Mukherjee for the State, for the Respondent

Final Decision : Allowed

Judgement

Toufique Uddin, J.—This second appeal was born out of a decision of Sri A.K. Goswami, learned Assistant District Judge, Contai, Midnapore dated 11th September, 1989 passed in Title Appeal No. 51 of 1989 reversing the Judgement and decree dated September, 29, 1988 passed by Sri S.A. Qayyum, Munsif, 2nd Court, Contai in Title Suit No. 4 of 1983. In background of this appeal the facts in a nutshell is as follows:

The land as described in schedule "Ka" and "Kha" to the plaint originally belonged to one Rudranarayan Patra and Ganganarayan Patra, the predecessors of the plaintiff and the defendants No. 2 to 5. The said Rudranarayan Patra and Ganganarayan Patra got the suit property from Manmatha Deb and others by Amalnama. The present plaintiff is the heir of Rudranarayan Patra, who got the "ka" schedule land by way of mutual partition. After the said Amalnama, the plaintiff's grand father Rudranarayan Patra and Ganganarayan Patra took possession in respect of the "kha" schedule land. The suit land as described in the "ka" schedule of the plaint is part and parcel of the "kha" schedule land. After the death of Rudranarayan Patra - the plaintiff's father and thereafter plaintiff himself had been occupying the suit land on payment of rent. Previously

the predecessors of the plaintiff used to pay rent to the owner of the land and after passing of the West Bengal Estate Acquisition Act they had been paying rent to the State. By the said Amalnama, the plaintiff's predecessors got 25 decimals of land. But in the settlement of 1956 only 11 decimals of land was recorded in favour of the plaintiff and remaining 14 decimals of land vested into the State. That record was not correctly prepared. J. L. R. O., and employee of the defendant No. 1, State of West Bengal were claiming the suit land as vested land and on 18th Poush, 1839 B.S. they threatened to dispossess the plaintiff from the suit land. Hence the suit.

2. Defendant No. 1, State of West Bengal, contested the suit by filing written statement, inter alia, denying all the allegations made in the plaint. It was also stated by the defendant No. 1 that the instant suit was not maintainable in law and was barred by limitation and the plaintiff has no cause of action to file the instant suit. Defendant No. 1 denied right, title and interest of the plaintiff over the suit land. It was also denied that the plaintiff's father acquired share over the suit land by way of mutual partition amongst the co-sharers. Defendant No. 4 filed written objection but did not contest. The predecessors of the plaintiff were not tenants of the original landlord. The positive defence case was that the suit land originally belonged to Dulal Chandra Deb & Ors., who were intermediaries and they have not retained the suit land. Hence it was vested into the State. Therefore, the plaintiff or their predecessors have no right, title and interest of the possession of the suit land.

3. Upon the pleadings the following issues are framed:

- 1) Is the suit maintainable in its present form and prayer?
- 2) Is the suit barred by limitation?
- 3) Is the suit bad for defect of parties?
- 4) Is the suit properly valued and court fees paid?
- 5) Has the plaintiff any right, title and interest and possession over the suit land?
- 6) Is the plaintiff entitled to get a decree for permanent injunction over the suit land?
- 7) To what reliefs, if any, are the plaintiff entitled to?

4. On hearing Learned Musiff, 2nd Court, Contai decreed the suit on contest by the judgment dated 29.9.88.

5. Being aggrieved by and dissatisfied with the impugned judgment of the learned Munsiff, the defendant No. 1, the State of West Bengal preferred the appeal.

6. On hearing both the sides and considering the materials on record the appeal was allowed by the learned Assistant District Judge, 2nd Court, Contai on contest but without cost against defendant No. 1 and ex parte against the rest

defendants by the judgment dated 11th September, 1989.

7. Being aggrieved by and dissatisfied with that judgment dated 11.9.1989 passed by the learned Assistant District Judge, 2nd Court, Contai, the plaintiff/appellant has preferred this appeal on the ground that the learned Assistant District Judge ought to have held that the predecessors of the plaintiff acquired possession of the suit land by way of Amalnama and excepting the Amalnama there is no other source of acquisition of right, title and interest over the suit land which was recorded in the name of plaintiff's predecessors in the Record-of-Rights of 1956. Further it was contended that Amalnama clearly shows that the predecessors of the plaintiff took settlement of 25 decimals of land, the note of vesting in respect of the suit land of area of 14 decimals is erroneous and there is no statement that the name of the plaintiff's predecessors were erroneously recorded. The learned Assistant District Judge ought to have held that Amalnama and the Dakhila created tenancy under the zamindar at the relevant point of time. The learned District Judge erred in law by holding that plot No. 831 has been shown vested in an intermediary khatian No. 4/1 and the said plot was not part and parcel of the Amalnama though the plaintiff described the same in "ka" schedule of the plaint.

8. The learned Assistant District Judge ought to have attached importance to the entry record in the Record-of-Rights.

9. Now, the point for consideration is if the impugned judgment dated 11.9.89 of the learned Assistant District Judge, 2nd Court, Contai calls for any interference or not.

10. I have heard the submissions made by the learned Counsel for the appellant and examined the materials on record.

11. None came for the respondent despite opportunities given.

12. The plaintiff/appellants claimed that "ka" schedule property comprising of plot No. 831/2007 measuring 6 decimal, 831/2008 measuring 3 decimal and plot No. 831/2009 measuring 5 decimal out of district Khatian No. 413 and 27 of Mouza Satra P.S. Ramnagar Dist. Midnapore measuring a total area of 14 decimal was inherited by him on the basis of Amalnama, a Bandobasta which is claimed to have been taken by his predecessor in respect of Khatian No. 413 and he is in possession thereof. Further, in the alternative, the plaintiff/appellant claimed right, title and interest over the property by adverse possession. Also, it is the case of the appellant that by Amalnama 25 decimal of land was obtained but in R.S. only 11 decimal was recorded in their favour and remaining 14 decimal was shown to be vested. It was further contended that the entire suit property was not recorded in the name of the predecessors of the plaintiff and the R.S. record of rights was erroneous.

13. Ext. 3 is the original Khatian of Plot No. 831/2025 wherein the superior title holder/Jamindar was shown as Dulal Ch. Deb & Ors. The alleged Amalnama is

Ext. 1. Therein, I find mention of plot No. 831. Three plots as mentioned in "ka" schedule were curved out of plot No. 831.

14. The learned First Appellate Court found that the document of settlement i.e. Bandobasta was stated to be lost. So, the question of taking of Amalnama and admitting the same in evidence is a misnomer. Further, he held that the Amalnama comprised of plot No. 839, 853 and 851 and it did not cover plots described in the "ka" schedule. I find that those three plots nos. 839, 853 and 851 are actually plots of boundary of the suit property situated at the plot No. 831. So, the learned Appellate Court appears to have committed serious mistake over the identity of the suit property. The State did not adduce any oral evidence. Simply, the State filed a written statement stating that the suit property belonging to one Dulal Ch. Deb & Ors. as intermediaries and they did not file B-option form for retention and as such the lands were vested to the State. They filed Khatian No. 4/1. Mere say that the land is vested is not enough. Somebody has to come from the State to support the case of the defence side, only oral argument will not do.

15. Section 6 of the West Bengal Estate Acquisition Act, 1953 reads as follows:

Right of intermediary to retain certain lands - (1) Notwithstanding anything contained in sections 4 and 5, an intermediary shall, except in the cases mentioned in the proviso to sub-section 2 but subject to the other provisions of that subsection, be entitled to retain with effect from the date of vesting -

(a) land comprised in homesteads;

(b) land comprised in or appertaining to buildings and structures owned by the intermediary or by any person, not being a tenant, holding under him by leave or license.

....

(2) An intermediary who is entitled to retain possession of any land under subsection 1 shall be deemed to hold such land directly under the State from the date of vesting as a tenant, subject to such terms and conditions as may be prescribed and subject to payment of such rent as may be determined under provisions of this Act and as entered in the record-of-rights finally published under Chapter V except that no rent shall be payable for land referred to in clause (h) or (i)

....

(5) An intermediary shall exercise his choice for retention of land under subsection 1 within such time and in such manner as may be prescribed. If no choice is exercised by him during the prescribed period, the Revenue Officer shall, after giving him an opportunity of being heard, allow him to retain so much of the lands as do not exceed the limits specified in clauses (c), (d) and (j) of that sub-section:

Provided that nothing in this sub-section shall require an intermediary to exercise the choice if he has already done so before the date of coming into force of the West Bengal Estates Acquisition (Second Amendment) Act, 1957.

16. In the present case, there appears no gazette notification about vesting or any proceedings initiated u/s 6(1) of WBEA Act, 1953. Further, there is also no paper showing that any action has been taken by the Collector u/s 10(2) of the said Act.

17. True, it is that the plaintiff is to prove its case. Here, the plaintiff appears to have done so. They have proved Amalnama which was executed on 16.3.48. The plaintiffs not only gave oral evidence but also proved some rent receipts of erstwhile Jamindar and subsequent receipts showing payment of rent to the Government of West Bengal. Those documents are of clear and unimpeachable character and amply prove at least the possessory title of the appellant/plaintiff. The State did not bring any person to prove how the so-called alleged portion of land was vested or to whom it is settled or who is possessing it. At least from the documents placed by the plaintiff, it cannot be clearly said that they have forcibly attempted to occupy the suit property. It has not been proved from the side of the State that the documents of Amalnama was not actually executed and/or it was a false document. In the R. O. R. prepared in 1956, it appears that some portion of the land, measuring 14 decimals, as acquired by Amalnama has been treated as vested whereas 11 decimals was recorded in the name of appellant/predecessor. It is not the case of the State that such recording of 11 decimal is also erroneous. Further, the appellant's predecessors have no other source of acquisition of title and interest over the property except by the Amalnama. Therefore, it is clear that by the Amalnama, the plaintiffs/predecessors took settlement of land of 25 decimals. The State has admitted acquisition of ownership of the plaintiff's predecessors by the Amalnama by recording of 11 decimals. How truncated portion $(25-11)=14$ decimals of the property as mentioned in the schedule has been vested has not been made clear by the State.

18. The findings of the learned Appellate Court below does not appear to be convincing. Rather, the findings of the learned trial court appears to be reasonable and acceptable. In support of their contention, the learned counsel for the appellant placed before me two decisions as reported in State of W.B. Vs. Murari Mohan Maity and Others, 2 CLJ 1. I find that the spirit of the two decisions cited above are squarely applicable in the present case in part and goes in favour of the appellant.

19. This being the position, I find that the present appeal is liable to succeed and the impugned judgment of the learned First Appellate Court requires to be interfered with having not been sustainable in the eye of law.

20. Accordingly, I set aside the judgment and decree passed by the learned Assistant District Judge, 2nd Court, Contai dated 11.9.89 and restore the

judgment and the decree dated 29.8.88 passed by the learned Munsiff, 2nd Court, Contai.

21. No order as to costs. Upon appropriate Application (s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.