

(1984) 02 CAL CK 0030
In the Calcutta High Court
Case No : A.F.A.D. No. 1465 of 1972

Surendra Nath Mondal and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 14-02-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1985 Cal 53

Hon'ble Judges : Sukumar Chakravarty, J

Bench : Single Bench

Advocate : Dipal Kumar Sengupta, for the Appellant; Sunil Kumar Mitra, for the Respondent

Final Decision : Allowed

Judgement

Sukumar Chakravarty, J.—This is the second appeal against the judgment and decree passed by the Learned Subordinate Judge, Murshidabad on 8-4-72 in Title Appeal No. 368 of 1968, setting aside the judgment and decree passed by the Learned Munsif, Lalbagh in Title Suit No. 277 of 1967 and dismissing the suit.

2. Plaintiffs brought the suit against the Midnapore Jamindary Co. Ltd. and the State of West Bengal for declaration of the title to the suit land and for permanent injunction. The land described in schedule "Ka" to the plaint including the land in "Kha" and "Ga" schedules was the khas land of the Midnapore Jamindary Co. Ltd. (defendant No. 7). The "Ga" schedule land measuring 5.01 acres was the disputed land. Mahendra Mondal, predecessor of the plaintiff took settlement of the "Ka" schedule land at an annual jama of Rs. 16/10/6 p. on the basis of a Dolfordi and possessed the same till his death. Since his death the plaintiffs are in possession of the said land. At the time of R. S. operation plaintiffs' names were recorded in respect of "kha" schedule land to the plaint out of the properties as described in schedule "Ka" excluding 61 decimal of land which fell into the then Pakistan. The suit land as described in "Ga" schedule to the plaint out of the "Ka" schedule was however wrongly recorded in the name of

the Midnapore Jamindary Co. Ltd. as their khas land in the R. S. khatian. Taking advantage of this wrong entry, plaintiffs' possession in the suit land was threatened.

3. The State of West Bengal, who is the pro forma defendant No. 2 in the suit contested the suit by filing the written statement but the defendant No. 1, Midnapore Jamindary Co. Ltd. did not enter appearance to contest the suit. The pro forma defendant No. 2 contested the suit on the ground that the notice u/s 80 of the C. P. Code was bad and invalid and that the suit land was vague and unidentifiable without the help of the local investigation and that the suit land being rightly recorded as the khas land of the Midnapore Jamindary Co. Ltd., vested in the State of West Bengal.

4. Learned Munsif, however, decreed the suit in favour of the plaintiff and on appeal. Learned Subordinate Judge allowed the appeal, set aside the judgment and decree passed in favour of the plaintiffs and dismissed the suit.

5. Being aggrieved by the judgment and decree of the first appellate Court, plaintiffs have preferred the Second Appeal on the ground that the learned first appellate Court committed mistake in setting aside the judgment and decree passed in favour of the plaintiff.

6. Mr. Depak Kumar Sengupta, Learned Advocate for the appellants-plaintiffs, has submitted that the Learned Subordinate Judge was not justified to hold that the notice u/s 80 of C. P. Code was not legal, valid and sufficient and that he committed mistake in dismissing the suit only on this ground without going into the merits of the case. He has also submitted that the Learned Subordinate Judge committed mistake in not sending back the suit on remand to enable the plaintiffs to get the identity of the suit land established by proper local investigation when he found that in the absence of the establishment of the identity of the suit land by proper local investigation, no effective relief could be given in the suit and when learned Advocate for the plaintiffs prayed before him at the time of hearing of the appeal for sending back the suit on remand for the purpose.

7. Mr. Sunir Kumar Mitra, learned Advocate for the respondent State of West Bengal, has however submitted that the First Appellate Court found that the notice u/s 80, C. P. C. was bad and invalid and that the plaintiffs did not take any steps for local investigation in spite of averment made in this respect in the written statement and that accordingly the First Appellate Court did not commit any mistake in dismissing the suit.

8. I have gone through the judgments of the Courts below with reference to the pleadings and evidence in the suit. The suit land is 5.01 acres in the middle portion of 100 acres of land in plot No. 1301 of Khatian No. 55 as described in Schedule "ga" to the plaint by giving a rough sketch map with some boundaries. The learned Ist Appellate Court has rightly held that the suit land to be precisely identified requires local investigation and that in the absence of the

establishment of the identity of the suit land by local investigation, no effective relief can be given in the suit even if plaintiffs succeed. It appears that Learned Advocate for the plaintiffs before the First Appellate Court realised it and accordingly prayed before him for sending back the suit on remand so that plaintiffs could take steps for local investigation. Learned Advocate for the plaintiffs appellants in this second appeal has also submitted that the local investigation is necessary to establish the identity of the suit land. I therefore find that the learned Ist appellate Court has been justified in holding that the plaintiffs cannot successfully proceed with the suit without getting the identity of the suit land established by local investigation. Learned First Appellate Court has observed in the impugned judgment that he finds it unnecessary to remit the suit to the trial Court for local investigation as the suit fails on the ground of invalidity and illegality of the notice u/s 80 of C. P. Code.

9. It appears that the learned Ist appellate Court perhaps would have considered the prayer of Learned Advocate for the plaintiffs for remitting the suit to trial Court for local investigation, if he would have found that the notice u/s 80 of C. P. Code was legal and valid.

10. I have gone through the copy of the notice u/s 80 of C. P. C (Ext. 6) with reference to the plaint and I find that the Learned First Appellate Court is not justified in holding that the notice u/s. 80 is not legal, valid and sufficient. It is true that the notice u/s 80, C. P. C., is not the exact copy of the plaint but it appears that all material ingredients of the plaint including the description of the suit land, cause of action, relief sought for and the parties interested and involved have been mentioned in the notice. Learned Munsif found that the notice u/s 80, C. P. C. was valid whereas learned First Appellate Court found that the notice was invalid and insufficient because cause of action has not been definitely stated and because the suit land has not been sufficiently described by giving boundaries. It has already been stated that the notice (Ext. 6) contains the cause of action and there does not appear to be any vagueness in the same. The suit land as given in the notice is 5.01 acres of land in the middle portion of 100 acre land in plot No. 1301 of Khatian No. 55 which has been described in "Ga" schedule of the plaint. The rough sketch map of the suit land with some boundaries as given in the plaint was however not appended to the schedule of the suit land as given in the notice. From the notice it appears that the Govt. should have no difficulty to understand the suit land although it will be difficult to establish the identity of the suit land without the help of local investigation. Learned First Appellate Court has observed in the judgment that the rough sketch map of the suit land with boundaries given in the plaint also does not establish the identity of the suit land without local investigation. The notice undoubtedly shows in respect of what area of land and in respect of which plot of which khatian, the suit is being filed.

11. As regards the validity and sufficiency of the notice u/s. 80, C. P. C. Learned Advocates on both sides have relied on the decision in Amar Nath Dogra Vs.

Union of India (UOI), . It has been held therein that to the suits to which Section 80 applies, compliance with it is mandatory and that a suit which does not satisfy its terms is liable to be dismissed. The Privy Council decision in AIR 1927 176 (Privy Council) as referred to in that case enjoins that the terms of Section 80, C. P. C. should be strictly complied with but that does not however mean that the terms of the notice should be scrutinised in pedantic manner or in a manner divorced from common sense. The decision in The State of Madras Vs. C.P. Agencies and Another, in the matter was also discussed in the decision in Amar Nath Dogra Vs. Union of India (UOI), and it was held therein "the object of Section 80 is manifestly to give the Govt. or the Public Officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the plaintiff should be accepted or resisted. In order to enable the Govt. or Public Officer to arrive at a decision it is necessary that it or he should be informed of the nature of the suit proposed to be filed against it or him and the facts on which the claim is founded and the precise reliefs asked for."

12. The notice (Ext. 6) considered in the light of the principles of law as enunciated above, is found to be valid and sufficient. The Learned First Appellate Court was therefore not justified in dismissing the suit on the ground of the alleged defect in the notice.

13. The Learned First Appellate Court did not go into the merit of the suit on the point of title and possession as claimed by the plaintiffs. Further the suit land requires to be identified on proper local investigation. Such being the position, ends of justice demand that the suit should be sent back on remand to the trial Court for fresh decision on all other issues excepting the issue on notice u/s. 80; C. P. C. after giving opportunity to the plaintiffs for taking steps for local investigation, on setting aside the judgment and decree of both the Courts below.

14. In the result, the second appeal is allowed and judgment and decree of the Courts below are set aside. The suit is sent back on remand to the trial Court for fresh decision in the light of observations and directions in the judgment subject to further direction that if the plaintiffs do not take steps for local investigation within one month from the date of the intimation of the receipt of the record in the trial Court, the suit shall stand dismissed. I make no order as to costs in this Second Appeal.