

(2014) 01 TP CK 0013

In the Tripura High Court

Case No : Regular Second Appeal No. 36 of 2004

**The Deity (The God-Shiva) Represented by Smt. Kamala Nath (Shebait)
Vs Sri Abani Mohan Nath and Others**

Date of Decision : 24-01-2014

Acts Referred:

Evidence Act, 1872 — Section 35

Specific Relief Act, 1963 — Section 34, 35, 36, 37, 38, 38

Citation : (2015) 1 GLD 582 : (2014) 4 GLT 220

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : A.C. Bhowmik, Mr. D.C. Roy, Mr. R. Dutta, Mr. M.K. Roy, for the Appellant; S. Bhattacharji, for the Respondent

Final Decision : Dismissed

Judgement

U.B. Saha, J.—This second appeal is preferred by the plaintiff-appellant against the judgment and decree dated 14.05.2004 and 21.05.2004 respectively passed by the learned Additional District Judge, North Tripura, Dharmanagar in Title Appeal No. 02 of 2004, wherein the learned appellate Court reversed the judgment and decree dated 07.02.2004 and 13.02.2004 respectively passed by the learned Civil Judge(Junior Division), Dharmanagar, North Tripura in Title Suit No. 6 of 2003. Heard Mr. D. C. Roy, learned counsel appearing for the plaintiff-appellant as well as Mr. S. Bhattacharji, learned counsel appearing for the defendant-respondents.

2. One Smt. Kamala Nath, claimed herself to be the Sebayet of deity God Shiva, brought the suit in the name of deity for perpetual injunction restraining the respondents, who were defendants in the suit, and their men/agents from cutting down valuable trees standing on the suit land under Mouja-Bagbasa, Tehasil-Sanicherra Revenue circle and Sub-Division-Dharmanagar, North Tripura district under Khatian No. 16, appertaining to C.S. Plot No. 444, corresponding to R.S. Plot No. 505, a "Debasthan", and from erecting bamboo fencing over the boundaries of the suit land and also from disturbing peaceful atmosphere. As the

plaintiff-appellant was possessing the land, on 17.04.2003 at about 3 pm the defendant-respondents in the company of some antisocial persons being armed with dao, lathi, spade and some bamboo slips forcefully entered into the suit land by way of breaking the bamboo fencing along the southern boundary of the suit land and cutting down some jackfruit and other valuable trees standing there and tried to construct new bamboo fencing over the boundary of the suit land with a view to occupying the same. On being resisted by the Sebayet, who brought the suit on behalf of the deity, the defendant-respondents went away.

3. The respondent No. 6, who was the defendant No. 4 in the suit, did not contest the suit, whereas the other defendant-respondents contested the suit by way of filing a joint written statement, wherein they had alleged that there was no cause of action for the suit and that Smt. Kamala Nath not being the Sebayet has no locus-standi to file the suit and the suit is not maintainable in view of the prescription made in Sections 34-38 of the Specific Relief Act, 1963.

4. The defendant-respondents' case before the learned Court below was that they have been owning and possessing the suit land as of their own on the basis of a valid sale deed from which they acquired title and that the plaintiff-appellant does not have any possession in respect of the suit land.

5. Upon considering the pleadings of the rival parties, the learned trial Court framed four issues, which are as under:

A. Is the suit maintainable in its present form?

B. Did the defendants forcefully enter into the suit land on 17.4.03 at about 3 pm, and cut down jack-fruit trees and other trees with a view to constructing a new boundary fencing occupying the suit land?

C. Is the plaintiff in possession of the suit land?

D. To what relief, if any, is the plaintiff entitled?

6. Both the parties adduced their oral as well as documentary evidences in support of their respective claim of possession and title. The learned trial Court decided all the issues in favour of the plaintiff-appellant and decreed the suit against the defendant-respondents restraining them and their agents from cutting down the valuable trees standing over the suit land and from erecting bamboo fencing over the boundaries of the suit land with a view to occupying the same and also from disturbing the peaceful atmosphere of the said "Debasthan" and peaceful possession of the plaintiff.

7. Being aggrieved, the defendant-respondents preferred an appeal before the learned Additional District Judge, Dharmanagar, North Tripura and the learned Additional District Judge reversed the judgment of the learned Civil Judge, Junior Division, Dharmanagar, North Tripura holding that the defendant-respondents are the true owner of the suit land and in support of their ownership they have produced the record of rights as well as the sale deeds, which are marked Exbt.-

A, B, C and D and also held that the Exbt.-2, the certified copy of R.S. Khatian No. 273 of Mouja- Bagpassa, obtained by the respondent reveals that in column No. 23, i.e. the column for recording for classification of the land mentioned as Debasthan/tilla, whereas as per the TLR & LR Act and Rules framed thereunder, the classification of land are paddy land, tilla, bhiti, charra, homestead, shop bhiti, pond etc. but no classification of land is there as Debasthan and further relying on the decision of the Gauhati High Court in Uttam Kumar Sen and Others Vs. Gita Das Choudhury and Others, held that the findings of the learned trial Court that the plaintiff is in possession of the suit land is erroneous as the oral and documentary evidence reveals that the defendant-respondents are in possession of the suit land and ultimately set aside the judgment of the learned trial Court. Hence, the instant appeal, which has been admitted for hearing on the following substantial questions of law:

Whether Khatian (records of right) can be taken as conclusive proof for the purpose of deciding title?

8. Mr. Roy, learned counsel, while urging for setting aside the judgment of the learned first appellate Court, would contend that the judgment impugned is perverse inasmuch as there is no proof to show that the defendant-respondents possessed the suit land and also the true owner of the same. He has also argued that the entries in the record of rights is only for physical purpose and the same creates no title in favour of a person in whose favour the record of rights is created. He has further submitted that a record of rights cannot be considered as a conclusive proof for deciding the title, which in the instant case the learned first appellate Court has done. In support of his aforesaid submission, he has placed reliance on the decision of the Apex Court in Jattu Ram Vs. Hakam Singh and others, He has also tried to take us on the evidence of the witnesses to show that the plaintiff-appellant was in possession of the Debasthan and the suit land fell under R.S. Khatian No. 273 of Mouja-Bagpassa.

9. On the other hand, Mr. Bhattacharji, learned counsel, while refuting the contention of Mr. Roy, would contend that the entry in record of rights is admissible in evidence u/s 35 of the Evidence Act. More so, the record of rights though admittedly not a conclusive proof of title, but has some presumptive value regarding the title as the same was prepared by the public officer entrusted with public duties. In support of his aforesaid contention he has placed reliance on a decision of the Privy Council in AIR 1937 69 (Privy Council) wherein it stated that entries on such Government records are evidence of title mainly because they are good evidence of possession but if contrary to the facts as to the possession at the time they were made they carry little, if any, weight. He has also submitted that even the witness of the plaintiff-appellant, PW3, deposed before the learned trial Court that the suit land belongs to the plaintiff-appellant and it is vacant land and a temple of "Shiva" is situated outside the suit land. He has further stated that the learned appellate Court very rightly did not consider the permission given by the SDM, Dharmanagar for holding Chadak Puja, as the

same cannot be treated as a document for proving the possession as well as the title. He has also urged that the defendant-respondents proved the documents, namely, purchased deed in the name of Mathura Mohan Nath and Banka Nath, executed by Abdul Manap, Abdul Matlib and Abdul Mannan purchased deed in the name of Kamini Mohan Nath, the father of the defendant-respondents executed by Mathura Mohan Nath and Banka Nath, certified copy of R.S. Khatian at the stage of attestation of the suit land and certified copy of the finally published R.S. Khatian in the name of the defendant-respondents. Learned counsel has also contended that the plaintiff-appellant did not challenge the title of the defendant-respondents and not only that she also did not claim for declaration of title to get a perpetual injunction against the true owner to title holder of the suit land.

10. Mr. Bhattacharji, learned counsel, finally contended that a trespasser in possession has no right to claim possession on trespassed land against the true owner taking the aid of Section 38 of the Specific Relief Act, 1963. In support of his aforesaid contention, he has placed reliance in the case of *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*,

11. In *Jattu Ram (supra)* the fact was that the appellant therein possessed of 90 kanals 7 marlas of land scattered at different places in the village Malikzada. The respondent therein had agreed to exchange those lands with his land in an extent of 90 kanals 12 marlas and for the excess 5 marlas, the appellant had paid the money. Later on, it transpired that the first respondent had defective title of his lands since he had purchased from Kartar Kaur and her two minor sons. The minor sons filed a civil suit against Hakam Singh claiming 2/3rd share and the Civil Court decreed the suit holding that the sale made by the mother of their 2/3rd share was void. Consequently on demand made by the minors, the appellant had to surrender 52 kanals 10 marlas of land to the minor sons of Kartar Kaur. As compensation thereof, the first respondent delivered 47 kanals 1 marla of land and promised to pay compensation for the balance loss of land and also promised to get mutation effected in the revenue records. Thereafter, when the first respondent started alienating the land in favour of the respondent Nos. 2 to 9, the appellant filed the above suit. The respondent, Hakam Singh, admitted the factum of the exchange as well as his purchasing the property from and decree of the civil Court that sale to the extent of 2/3rd share of minors as void and that the appellant had parted with possession of 52 kanals and 10 marlas of lands in favour of the minors though he pleaded that the appellant had without his consent, voluntarily parted with possession of the lands. The respondent further averred that the lands in the possession of the appellant are only as tenant-at-will though the first respondent had admitted that no rent was paid after the delivery of the possession of 47 kanals 1 marla. The appellate Court also found in column 9 of Exh. P-8 Jamabandi "Tassawar Tabadla". On that premise the Apex Court held that the entries made in the record of rights is only for the physical purpose and the same creates no title in favour of a person in whose favour the record of rights is created. There is no quarrel with the

aforsaid proposition laid down by the Apex Court.

12. In the instant case, on the basis of the entries made in the revenue record, i.e., Khatian, the learned appellate Court taking note of Section 43 of the TLR & LR Act, 1960 as amended up to date, only take the statutory presumption that the respondents herein are in possession of the suit land and title over the said land is confirmed on the basis of documents, i.e. purchased deed in the name of Mathura Mohan Nath and Banka Nath, executed by Abdul Manap, Abdul Matlib and Abdul Mannan, a purchased deed in the name of Kamini Mohan Nath, the father of the defendant-respondents as the plaintiff-appellant did not challenge the title inherited by the defendant-respondents.

13. In Kesho Prasad (supra) the Privy Council stated that entries on such Government records are evidence of title mainly because they are good evidence of possession but if contrary to the facts as to the possession at the time they were made they carry little, if any, weight.

14. In Sopan Sukhdeo Sable (supra) the Apex Court taking note of its earlier judgment in Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, held that no injunction could be granted against the true owner at the instance of persons in unlawful possession. In the instant case, the learned appellate Court taking note of the revenue record as well as the sale instances, on the basis of which the defendant-respondents inherited the title, did not commit any wrong in disbelieving the case of the plaintiff-appellant and reversing the judgment and decree passed by the learned trial Court and even if the plea of the plaintiff-appellant is believed then also she is a trespasser in possession and thus she is debarred from taking the aid of Section 38 of the Specific Relief Act, 1963.

15. In Section 43 of the TLR & LR Act, 1960, as amended up to date, discussed about publication of the record of rights. In sub-Rule 3 of the said Section specifically stated that every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct. In the instant case, admittedly the record of rights contained the name of the defendant-respondents, whereas it is shown that defendant-respondents are in possession of the land. More so, in the certified copy of the record of rights relied upon by the plaintiff-appellant also did not show that the deity Shiva is either in possession of the land or holding the title through its Sebayat. Mere mentioning Debasthan would in no way help the plaintiff-appellant to prove that she is in possession of the suit land, particularly when her own witness specifically stated that the Debasthan is outside the suit land.

16. There is no quarrel with the proposition laid down by the Apex Court in Jattu Ram (supra) as stated supra, but when a statute like TLR & LR Act specifically mentioned presumption about the title could be conferred on the basis of record of rights, then according to this Court, the learned first appellate Court did not commit any wrong holding that the plaintiff has failed to prove that the

defendant-respondents forcibly entered into the suit land and the plaintiff is in possession of the suit land. More so, when the plaintiff-appellant applied for an injunction to restrain the violation of an alleged right of her and the existence of the right be disputed, she has to establish that the right before she got injunction to prevent recurrence of this violation, which she failed to establish, particularly an existing legal right vested on her on the basis of a title.

17. In view of the above, the decree passed by the learned first appellate Court is maintained and the instant second appeal is accordingly dismissed. As the appeal is dismissed, the stay granted earlier, stands vacated. In terms of this judgment, prepare the decree.

Send down the lower court records.