

(1984) 08 GAU CK 0022
In the Gauhati High Court
Case No : Civil Revision No. 148/83

The State of Assam and Another

APPELLANT

Vs

Shri B.D. Patowari

RESPONDENT

Date of Decision : 17-08-1984

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Rule 10, 10(2), 10A, 18(2), 18(3)
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2), Order 14
Rule 3, Order 15 Rule 3, Order 39 Rule 1
Constitution of India, 1950 — Article 14

Citation : (1985) 1 GLR 66

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : P. Prasad, for the Appellant; A.B. Choudhury and K. Basar, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.—What is challenged in this revision is the jurisdictional competence of the trial court to pass the impugned order. If its jurisdiction to "entertain" the suit was barred, could the trial court pass the impugned order of temporary injunction?

2. The main Defendant-State of Assam is the Petitioner in this case. The only other Defendant is S.D.O. (C), Goalpara, its officer or instrumentality, who had issued against the Plaintiff /opp. party a notice under the provisions of Assam Land and Revenue Regulation, for short the Regulation, for his eviction from the suit land. The validity of the notice, inter alia, was challenged in the suit in which the prayer for temporary injunction to stay eviction till disposal of the suit was allowed by the trial court. The order being confirmed in appeal State has preferred this revision.

3. That Plaintiff's case was that he was in occupation since 1974 of 2 kathas 5 lechas of land in Dag No. 15 (part of Dag No. 191) at village Balodmati under

Balijana Circle in Goalpara District. He had been paying therefore T.B. (Touzi Bahi) rent regularly. He was a landless person. He had submitted an application for settlement of the land with him. After enquiry, the Circle officer Balijana, had recommended settlement in his favour, vide his letter No. BJCS. 13/80/243 dt. 26.3.81. His case for settlement was accordingly pending consideration before the Advisory Board. The total area of the concerning dag was 66 bighas and settlement in piece meal was being given in a phased manner to the occupants. State Govt. took a decision as manifested in its circular No. RLS/550/76/pt. III/5 dt. 3.4.83 that persons who were in occupation of Govt. land without settlement prior to 1980 should not be disturbed while preceding for eviction against persons occupying Govt. lands after 1980 should be undertaken and steps should also be taken to prevent further encroachment on Govt. khas land. The Plaintiff had his dwelling house on the suit land. Yet he was singled out for eviction although many others who were similarly occupying lands in the same dag and awaiting settlement were spared. As a result he was denied the equal protection of law envisaged under the Constitution on account of the eviction notice dt. 5.4.82 issued against him in Eviction Case No. 10/82 (Balijana) under Sub-rules (2) and (3) of Rule 18 of the Settlement Rules framed under the Regulation. He was given time till 29.6.82 to quit and vacate the land by dismantling his house and he apprehended irreparable loss if the eviction was carried out using force to remove him therefrom lock, stock and barrel. His prayer in the suit was for a declaration that the suit land be settled with him as been done in the case of some other occupants. His prayer for a temporary injunction was for restraining the Defendants from evicting him pending disposal of the suit.

4. On behalf of the Defendants cause was shown against issue of the temporary injunction. The main ground taken was that the jurisdiction of the civil court to entertain the suit was barred by Section 154(1)(a) of the Regulation which reads thus:

154(1) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following matters -

(a) questions as to the validity or effect of any settlement or as to whether the conditions of any settlement are still in force.

It was further stated that the Plaintiff was not a landless person though it was admitted that he was in occupation of the suit land and the Govt. was realising from him T.B. rent. Defendants also admitted that the Plaintiff had submitted an application for settlement of the suit land with him which was recommended by the S.D.C.. A proposal for settlement of 64 bighas 3 kathas 14 lechas of land of the concerned dag was submitted in the years 1963 and 1968 in favour of some landless persons of the Scheduled Caste and their cases were pending consideration of the Advisory Board. The suit land was under possession of Rupahi Bala Das, a landless widow belonging to the scheduled caste community and therefore a proposal for settlement thereof with her was submitted and her

case was also pending before the Advisory Board. She was also paying T.B. rent but during her absence in the year 1964 Plaintiff had encroached upon the suit land. The Plaintiff had no right to get settlement of the suit land and there was no cause of action for the suit.

5. Learned Munsiff reached the conclusion that the Plaintiff had a prima facie case to go to trial. Because the possession of the suit land and his payment of T.B. rent and more importantly the fact that his application for settlement of the land being recommended were admitted by the Defendants. However he also observed that "there was no interference or objection" from Rupahi Bala Das during the long period of Plaintiff's occupation of the suit land since 1974 and it was possible, therefore that Plaintiff's application for settlement was receiving consideration of the authority concerned. Whether the Plaintiff was landless person or not and whether the proposal for settlement was only in favour of landless persons belonging to the scheduled caste community were matters which could be decided only on evidence but indisputably these facts established atleast the position that there was a case to be tried. If the Plaintiff was evicted it would cause irreparable loss. These were also his findings. In dealing with the Defendants objection to Courts jurisdiction u/s 154 of the Regulation he held that the aforesaid circular dt. 3.4.80 "carry the Plaintiff almost to the point of acquiring right of a landholder giving him some right to take shelter of the civil Court while singled out of many for eviction". In appeal his finding were endorsed by the learned District Judge, who, however, did not deal with the question of bar of Section 154 pleaded by the Defendants.

6. Before me, learned Govt. Advocate, Assam, Mr. P. Prasad has challenged the finding and also the conclusions reached by the courts below, It is true, some of the findings of the trial court cannot be said to be unassailable. But, I find it difficult to accept Mr. Prasad's submission that the conclusion reached by the courts below are not sustainable in law. Rupahi Bala Das was not before the court. Plaintiff had not said anything about his source of possession. Defendants on the other hand asserted Rupahi Bala's prior possession and there was no material before the court to hold that there was no interference or objection from Rupahi Bala against Plaintiff's occupation of the suit land. I also find it difficult to uphold learned Munsiff's finding that the aforesaid circular dt. 3.4.80 conferred any right of the nature of a land holder as envisaged under the Regulation.

7. Whether the trial court in the facts and circumstances of the case could have at all issued temporary injunction is the moot point in that whether it lacked jurisdictional competence to do so in virtue of the bar of Section 154 of the Regulation pleaded by the Defendants. Provisions relating to the power and jurisdiction of a civil court to issue temporary injunction are contained in Section 94 and Order 39, Rules 1 and 2 of the Code of Civil Procedure. According to Section 94 the court may, "to prevent the ends of justice from being defeated", grant temporary injunction and may also make such other interlocutory order as may appear to the court to be just and convenient "if it is so prescribed". The

provisions of Order 39 deal with "temporary injunctions and interlocutory orders". Under Rules 1 and 2 thereof a temporary injunction may be granted "in any suit" by the court to restrain Defendant from causing any "injury" to the Plaintiff. The various species of the "Injury" are illustratively indicated in Rule 1 while Rule 2 envisages additionally or "other injury of any kind". These provisions ex-facie do not manifest the requirement that court issuing the injunction must have the Jurisdiction "to try" the suit. But, reference in this connection must be made also to Section 9 Code of Civil Procedure. It is contemplated thereunder that the court shall "subject to the provisions herein contained have jurisdiction "to try" all suits of a civil nature excepting the suits "of which the cognizance is either expressly or impliedly barred." On the face of it, the section does not exclude the "jurisdiction" of the civil courts to entertain any suit. What it prohibits is the trial of any suit which is not of a civil nature and cognizance whereof is either expressly or impliedly barred. Reference may now be made to some other relevant provisions of Code of Civil Procedure. According to Rule 2(2) of Order XIV, if the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to "jurisdiction of the court, or a bar to the suit created by any law for the time being in force" and for that purpose it may postpone settlement of other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue. According to Rule 3 of Order XV which deals with disposal of suit at the first bearing, the court may proceed to determine such issues which, if it is satisfied, without further argument or evidence than the parties can at once adduce will be sufficient for the decision of the suit. However, this can only be done, according to the proviso, where summons has been issued for settlement of issues only and the parties or the counsel are present and none of them objects to the course adopted.

8. Indeed, the provisions of Orders XIV and XV spring into action only in the course of trial of the suit and leave no doubt about the position that Section 9 does not debar any civil court from entertaining any suit if it was a suit of a civil nature. In *Smt. Ganga Bai Vs. Vijay Kumar and Others*, their Lordships held that there is an inherent right in every person to bring a suit of a civil nature and that a suit for its maintainability requires no authority of law. However, what has to be taken notice seriously in the context of the present list is the pronouncement of their Lordships made in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, In that case five learned Judges of the Supreme Court examined the scope of Section 9 in the particular context of exclusion of jurisdiction and enumerated seven golden principles of which the nodal point was that exclusion of jurisdiction of the civil court is not to be really inferred and only when the six conditions laid down by their Lordships were satisfied such an inference can be drawn. One of the conditions which dealt with an express bar mandated an examination of the scheme of the particular Act to find adequacy or sufficiency of the remedies provided. In *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, it was observed that there are no different

systems of civil courts for enforcement of different kinds of rights. The principle of separate remedy only for the purpose of injunction available in a court of Chancery, which was kept intact even after the Judicature Act of 1873, is not applicable in India. The jurisdiction of the civil court in India is limited to cases in which there is a right at law, that is to say, a right to be pursued in such Court.

9. Thus, in any case, as soon as there was infringement of any civil right of any person, he had a right to invoke the jurisdiction of the civil court and the question whether the court had jurisdiction to "try" the case would not deny it the jurisdiction to entertain any claim made in respect of infringement of any civil right of any person. It is only in the course of trial, at any of the different stages indicated by the provisions of Order 14 Rule 2 and Order 15 Rule 3 that the question relating to exclusion of its jurisdiction can be decided. The civil court would not be powerless therefore to exercise its jurisdiction u/s 94 and Order 39 or even u/s 151. Indeed, Section 94 authorises the court to grant a temporary injunction and to make any interlocutory order for the "ends of justice" in accordance with the provisions of Order 39 and Section 151 wherein the cases and the circumstances in which the temporary injunction may be granted are clearly inscribed. The power is not saddled by any other condition precedent save those expressly stated therein and what appears on the face of Rules 1 and 2 Order 39 or Section 151 is the requirement of pendency of the suit and not its maintainability. Obviously, the paramount requirement mandated by Section 94 is the necessity to pass the order "to prevent ends of justice being defeated" pending final determination of the rights of the parties in the suit, In *R.C. Bhagawan Das v. Pawan Agarwalla*, (1983) 1 GLR 443, Saikia, J. observed that once a suit is instituted the court derives jurisdiction from the suit itself to act under Order 39 Code of Civil Procedure. I have no doubt, as alluded, the power to grant temporary injunction flows from the provisions of Sections 9, 94 and 151 and also Order 39 Code of Civil Procedure. But I would like to add that this power is itself limited by the provisions of Section 9 itself which prescribes that the civil court shall exercise jurisdiction in the matter of trial of any suit in accordance with the provisions contained in the Code, Therefore, even if a temporary injunction is granted when the stage comes to act under Order 14 Rule 2 or Order 15 Rule 3 the court must act according to the provision thereof, This position is, indeed, borne out by the Maharastra amendment of CPC (in 1970) whereby Section 9A was inserted which may be profitably extracted below:

9A. Where by an application interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue to be decided by the Court as preliminary issue at bearing of the application.

(1) If, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of injunction, appointment of a receiver or otherwise, made in any suit, an objection for the jurisdiction of the court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the bearing of such application the issue as to the

jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in Sub-section (1) at the hearing of any such application, the Court may grant such interim relief as it may consider necessary pending determination by it of the preliminary issue as to the jurisdiction.

It is true that the provision in terms it restricted in its application to the State of Maharashtra. It nevertheless manifests support for the view taken by me. The civil Courts in Maharashtra are mandated to follow the provisions of Section 9A and accordingly they must decide any objection to jurisdiction of the Court to entertain the suit expeditiously without adjourning its hearing till hearing of the suit as held in *Radhakishin N. Advani Vs. Sheila Gobind Mirchandani and Another*, There, therefore, by the express provisions of Section 9A, duty of the court to act under the provisions of Order 14 Rule 2 or Order 14 Rule 3, was taken care of.

10. In this connection I may also refer to the relevant provisions of Order 7 of which Rule 9 deals with "procedure on admitting Plaintiff's plaint". Rules 10 and 10A deal with return of plaint. These provisions also indicate that until a plaint is returned the court is not powerless to pass any order in the suit or be lacking in "jurisdiction" to do so. Sub-rule (2) of Rule 10 provides that on returning a plaint the court shall endorse thereon, among other, a brief statement of the reason for returning. This power may be exercised by the court at any stage of the suit. According to Rule 10A the plaint may be returned to the Plaintiff at a stage when the Defendant has appeared if the court is of the opinion that it should be so done but it must before doing so intimate its decision to the Plaintiff. In *Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar*, their Lordships held that when a civil court is of the opinion that it had no jurisdiction over the subject matter of the suit it can still decide the question of jurisdiction and order return of the plaint if the decision so warrants.

11. In the instant case, therefore, I have no hesitation to hold that the impugned order cannot be said to be without jurisdiction merely because an objection is taken by the Defendants to the maintainability of the suit in view of the bar of Section 154 of the Regulation. It is true, as alluded, the trial court had made some observations on this aspect of the matter but the same does not impair or indent in any manner his jurisdiction to grant injunction. I have already indicated that his findings as respects non-applicability of Section 154 are not sustainable because they are not supported by the materials on record. Indeed, stage has not yet come for him to determine the issue relating to maintainability of the suit which could only be decided in accordance with the provisions either of Order 14 Rule 2 or Order 15 Rule 3. That apart, as I have noticed above, learned District Judge has also not rightly confirmed the finding of the trial court on the bar of Section 154.

12. I have merely to see in the instant case if the conclusion reached by the courts below that Plaintiff had established his prima facie case. About this I have no doubt. Because, whether or not Plaintiff had acquired the right of a like nature as that of a land-holder as defined in the Regulation he has atleast challenged an arbitrary action of the 2nd Defendant who purported to act under sub-rules (2) and (3) of Rule 18 of the Rules. He has pleaded infraction of his constitutional right against invidious discrimination which is prohibited by Article 14. He has also challenged the validity of the notice otherwise by raising "bonafide claim of right" and on that ground inapplicability of the provisions of Sub-rule (2) to his case. In this connection learned Counsel for the opp. party Mr. A.B. Choudhury drew my attention to a decision of the Division Bench of this Court in Kamala Dekka's case, (1983) 2 GLR 258. This Court speaking through Lahiri J., held that in a case of "bona fide claim of right" the provisions of Rule 18(2) cannot be invoked. The rule can be invoked for eviction of person from lands which were used for public purposes or reserved for public purposes and not in all cases of khas land or land belonging to Govt. or local authorities. However, I would not like to say anything further on this point as that would be pre judging the issue. Suffice it to say that on the allegations made in the plaint it cannot be said that the Plaintiff had no case to go to trial. On the question of balance of convenience and irreparable loss it is not contested, and indeed cannot be contested also, that the findings of courts below are unassailable. Because, the Plaintiff has his dwelling house on the suit land and if he is evicted therefrom he shall suffer irreparably injury.

13. However, although I am satisfied that the courts below had jurisdiction to grant injunction there is scope for my interference with the impugned order, albeit to a limited extent. Because, the life of temporary injunction has not to run, according to me, throughout the trial of the suit. It could only be co-extensive the right claimed by the Plaintiff, namely, his right to get settlement of the suit land from Govt. pursuant to his application therefore which is pending decision of the Advisory Board. That apart, Defendants' plea that the suit is barred by Section 154 also remains undecided. Thus, the order of temporary injunction stands modified in the extent that it shall remain in force until such time as the court has not taken a decision (on the question of its jurisdiction to try the suit) in accordance with either Order 14 Rule 2 or Order 15 Rule 3. It should also be made clear that the injunction shall not debar the Defendants from taking any decision on Plaintiff's application for settlement of the suit land which is pending decision of the appropriate authority.

14. Before parting with the records I may indicate that from both sides learned Counsel placed before me several decisions of this Court bearing on the scope and ambit of the provision of Section 154 of the Regulation. Indeed, Mr. Prasad's submission was that even if it be held in the facts of the instant case that the provision of Clause (a) of Section 154(1) does not apply it cannot be so said in respect of the provisions contained in Clause (m) of the section. On the other hand Mr. Choudhury submitted that none of the provisions contained in Clauses

(a) to (m), and for that matter Section 154(1) as a whole is applicable to the facts of the instant case. However, I would not like to express any opinion on rival contentions inasmuch as this matter, according to me, has to be decided by the trial court and it is not permissible for me to assure latter's jurisdiction. It may so happen that mixed questions of law and fact may be involved and as such unless the Defendants have filed a written statement it may not be possible for the trial court to decide the issue of jurisdiction. Be that as it may the matter lies squarely within the jurisdiction of the trial court to take a decision thereon in accordance with the provisions either of Order 14 Rule 2 or Order 15 Rule 3 as discussed above.

15. In the result this application is allowed to the extent indicated above. The rule is made absolute. But in the facts and circumstances of the case I leave the parties to bear their own costs in this Court.