

(1965) 12 GAU CK 0002
In the Gauhati High Court
Case No : Second Appeal No. 90 of 1962

The State of Assam

APPELLANT

Vs

Sifat Ali and Others

RESPONDENT

Date of Decision : 02-12-1965

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 145, 147, 154(I)
Criminal Procedure Code, 1898 (CrPC) — Section 145
Limitation Act, 1908 — Article 120, 14, 142

Citation : (1965) 12 GAU CK 0002

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : G.K. Talukdar, Jr. Government Advocate, for the Appellant; S.K. Chose, J.P. Bhattacharjee and A.M. Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, C.J.—This appeal is filed by the State of Assam. Respondent Sifat Ali and others brought a suit for declaration of title to 30 B. 2 K. 14 Chattaks of land of periodic patta No. 171 of village Niargram Part II Pargana Sonapur in the district of Cachar. Plaintiff's case is that the property belonged to Ashrof Ali Choudhury, Imani Meah Choudhury and other Choudhuries of village Sonabarighat. The land was sold by Ashrof Ali Choudhury and the other owners by two registered Kobalas to the Plaintiffs and their fathers for Rs. 900. The land was subsequently made a grazing reserve. In 1942 the Plaintiffs got an annual patta of the land as the land was made open for settlement. Objection was raised to the settlement of the land with the Plaintiffs and an application was preferred to the Deputy Commissioner for cancellation of the settlement of the disputed land with the Plaintiffs. The Deputy Commissioner rejected it. An appeal was preferred to the Assam Revenue Tribunal, which was dismissed. Subsequently after making due inquiry and the reports of the officers, the Deputy Commissioner converted the annual patta into a periodic one on the 12th April 1945. A periodic patta was subsequently issued in favour of the Plaintiffs by the

Deputy Commissioner, Cachar on behalf of the State; Some cases were started in the court of G. Zaman, E.A.C., 1st class and the property was kept under attachment u/s 145, Code of Criminal Procedure. An appeal was also preferred before the Revenue Tribunal against an order refusing cancellation of the settlement with the Plaintiffs. The appeal was dismissed. But on certain remarks being made by the Tribunal, the Deputy Commissioner, Cachar started a miscellaneous case and asked the Respondents to show cause as to why the periodic patta should not be cancelled and turned into an annual one. The Deputy Commissioner, Cachar recommended by his order dated the 23rd August 1946 to the Commissioner for cancellation of the periodic patta and the Commissioner by order dated 16th September 1946 ordered cancellation of the periodic patta of the Plaintiffs and for the conversion of the same into an annual patta. The said order of the Commissioner has also been challenged being without jurisdiction.

2. The trial court dismissed the suit. On appeal the District Judge, Cachar has reversed the decision of the trial court.

3. In the second appeal two main points have been urged on behalf of the State. Firstly it is contended that the suit is barred by Article 14 of the Limitation Act and secondly it is urged that Article 142 will not apply to this case as has been found by the lower appellate court.

4. Article 14 of the Indian Limitation Act reads as follows:

Description of Period of Time from suit limitation. Which period begins to run. To set aside any act or one The date of the One order of an officer of year. act or order Government in his official Capacity not herein otherwise expressly Provided for

Article 14 is a residuary" article and it only applies to acts or orders which need be set aside. If an order is void being without jurisdiction, such an order can be ignored and the Plaintiffs can bring a suit for declaration of their title without asking for setting aside the order. In such a case Article 14 will not be attracted. In the case of AIR 1927 217 (Privy Council) their Lordships of the Privy Council laid down as follows:

If the order is illegal the Plaintiff is not bound to file a suit to set it aside, but is entitled to wait until it is enforced against him, and the attempt to enforce it against him gives him a good cause of action.

In the case of Ranjit Kumar Chakravarty Vs. State of West Bengal, it was held that if the order of termination of services of an employee was without jurisdiction, it is not necessary for the employee to ask for setting aside of the order of termination. A suit for declaration was sufficient and Article 14 of the Limitation Act was not attracted in such a case. To the same effect is the decision of the Allhabad High Court in the case of Jagdish Prasad Mathur and Others Vs. United Provinces Government, In our opinion the lower appellate court is right in

holding that Article 14 is not attracted to a case where the order passed against the Plaintiffs need not be set aside. If the order is without jurisdiction it is open to the Plaintiffs to bring a suit for declaration of his title and to such a suit Article 14 of the Limitation Act will not be attracted.

5. It was then urged that the order of the Commissioner cancelling the patta was not without jurisdiction. The annual patta after due inquiry and after the official report that the conditions, for converting the annual patta into a periodic patta existed in the present case, the Deputy Commissioner directed that the land should be settled with the Plaintiffs under a periodic patta. Subsequently the settlement was given effect to and a periodic patta was issued in the name of the Plaintiffs it was subsequent to the issue of the periodic patta that proceedings were started against the Plaintiff-Respondents for cancellation of their periodic patta and the Commissioner cancelled the patta. There is no provision in the Assam Land and Revenue Regulation giving authority to the Commissioner to cancel the periodic patta. If the Deputy Commissioner exercises his power of cancelling the patta, such an order may be appealable to the Commissioner. If the Deputy Commissioner either directs settlement of the land or refuses to settle the land, an appeal may lie against the order of the Deputy Commissioner to the Commissioner u/s 145 of the Assam Land and Revenue Regulation. But the Commissioner has no power to cancel the settlement in his administrative capacity and more so, when the periodic patta has been issued in pursuance of the order of settlement passed by the Deputy Commissioner.

6. Reliance is placed by the counsel for the State on Rule 26 of the settlement rules under the Assam Land and Revenue Regulation. Rule 26 reads as follows:

26. Subject to the general control of the State Government, the Commissioner shall have power to confirm all settlements, and also to cancel any settlement made in contravention of these rules.

The foot-note attached to this rule reads as follows:

Note. The power conferred on the Commissioner under Settlement Rule 26 is neither appellate nor revisional and is not affected by the Commissioner's Powers Distribution Act. If a settlement is obviously in order or obviously contravenes the rules and there is no objection on these lines, the Commissioner's powers remain as in Settlement Rule 26, but if there is an issue raised on either account the case becomes one in appeal u/s 147(c) of the Assam Land and Revenue Regulation and goes out of the Commissioner's jurisdiction.

The plain reading of Rule 26 makes it clear that the power exercised by the Commissioner is neither an appellate nor a revisional power. It is only an administrative power and further that it only gives him jurisdiction to confirm or to cancel settlement and not to cancel a periodic patta issued in pursuance of the order of settlement. Once the patta has been issued, it can only be cancelled for violation of the terms embodied in the patta. In the present case there is no violation of the terms of the patta. It is also clear from the foot-note that the

jurisdiction of the Commissioner is only in the cases where] there has been an obvious contravention of the rules. If there is no dispute with regard to the violation or otherwise of the rules, Rule 26 does not authorise the Commissioner to cancel the patta in his administrative capacity. The reason behind this footnote is obvious. As an order of the settlement officer is appealable u/s 147 to the Commissioner, if there is any controversy as to whether the settlement was proper or not, such a controversy can only be decided by the Commissioner sitting as a court of appeal, if and when any appeal is filed against an order of settlement or refusal to settle and not under Rule 26 of the settlement rules. If the Commissioner can in his discretion in every case settle or cancel the settlement in the exercise of his powers under Rule 26, then the provisions of appeal will become nugatory. It cannot be said in the present case that there was any obvious contravention of the rules: The order of the Commissioner thus in the present case was without jurisdiction and Article 14 of the Limitation Act will not apply to the present case.

7. There is no force in the second contention raised by the counsel for the State. Even if Article 142 of the Limitation Act is not attracted, the suit will be well within time as it will be covered by Article 120 of the Limitation Act.

8. Lastly it was urged that the suit is not maintainable in view of the provisions of Section 154(1)(a) of the Assam Land and Revenue Regulation which reads as follows:

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.

This does not debar the civil court from entertaining suits based on title to the property. The Plaintiffs case is that the periodic patta in their favour creates a right of the Plaintiffs in the property and that right has been affected by the order of the Commissioner. This encroachment on the right of the Plaintiffs gives them a cause of action to bring a suit for declaration of their right. In the case of *Arjad Ali Laskar v. State of Assam* ILR(1955) Gau 201 it was held by a Division Bench of this Court that Section 154(1)(a) of the Assam Land and Revenue Regulation is somewhat loosely worded, but it should not be so broadly constructed as to debar suits involving questions of title from the purview of Civil Courts, merely because the title claimed had its origin in settlement of lands. In fact it is the Defendant who is challenging the validity of settlement made in favour of the Plaintiffs. In the result, therefore, there is no force in this appeal and it is dismissed.