

(2014) 06 TP CK 0052
In the Tripura High Court
Case No : RSA No. 22 of 2003

The State of Tripura Vs Malati Das

Date of Decision : 23-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100 80(1)
Land Acquisition Act, 1894 — Section 4
Specific Relief Act, 1963 — Section 34

Citation : (2014) 06 TP CK 0052

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : Nepal Majumder, Advocate for the Appellant; P.B. Chakma, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.—This second appeal u/s 100 of CPC is directed against judgment and decree dated 04.10.2002, passed by learned Addl. District Judge(Fast Track Court), North Tripura, Kailashahar in Title Appeal No. 9 of 1997.

2. The appeal has been admitted for hearing by order dated 19.02.2004 on the following substantial questions of law:

1. Whether in view of acquisition of the suit land vide Ext. 3(Notification u/s 4 of the Land Acquisition Act under No. F.14(8)-ACQ/REV/82 dated 25th May, 1982) could the learned Court below hold that the plaintiff-respondents have any title over the suit land?

2. Whether in view of the special provision as contained in the Land Acquisition Act, 1984, the suit for declaration u/s 34 of the Specific Relief Act is maintainable?

3. Heard learned counsel, Mr. Nepal Majumder for the appellants and learned counsel, Mr. P.B. Chakma for respondent Nos. 1 to 5. Respondent Nos. 6 and 7 have chosen to remain absent.

4. Brief fact necessary for disposal of the present second appeal is that the

respondents as plaintiffs(hereinafter mentioned as plaintiffs) instituted Title Suit No. 7 of 1990 seeking declaration and injunction against the appellants, who were arrayed as defendants(hereinafter mentioned as defendants), inter alia, praying for the following reliefs:

A) Granting declaration that these plaintiffs were/are the owner of and holders of right & title to the suit land described in the schedule below and are therefore entitled to the requisite compensation award of this Scheduled land in case of or for the acquisition of this said suit land or any portion thereof; and that plaintiffs were entitled to correction of the record of right of the suit land and its khatian by introduction of their names therein;

B) Granting declaration that these plaintiffs did not voluntarily constitute or surrender any land from within this, suit land in favour of the Govt. or any other authority or person for construction of any embankment.

C) Granting & issuing mandatory injunction directing the defendants and their agents and servants to arrange for requisite compensation award in favour of the plaintiff and to pay the same to them in connection with the acquisition of the suit land or any portion thereof, because of such acquisition;

D) Granting all other reliefs deemed fit & proper;

E) Granting full cost of litigation.

5. The plaintiffs contended that the suit land originally belonged to Gagan Chandra Das and subsequently the plaintiffs inherited the suit land and became owners of the same. Subsequently, the suit land was recorded in the khas khatian and the plaintiffs preferred an application u/s 11(3) of the TLR & LR Act before the Collector but the decision of the Collector was not fully in favour of the plaintiffs and, therefore they instituted Title suit No. 7 of 1990 seeking the relief as stated hereinabove. The respondents by Notification dated 25.05.1982 acquired the suit land along with other land for construction of an embankment on Laxmicherra river and did not pay any compensation. The plaintiffs, therefore, instituted the suit for declaration of their right title and interest and for correction of khatian in their names as well as for direction to the defendants to pay them compensation for construction of embankment over the suit land.

6. The defendants contested the suit, inter alia, contending that the area was a flood prone area. The people of both side of Laxmicherra river approached the defendants to construct embankment on both side of the river and, accordingly, they voluntarily handed over their land to construct the embankment. Accordingly, the embankment was constructed in the year 1982. The plaintiffs did not raise any objection at that point of time and so the plaintiffs were not entitled to any relief as sought in the suit.

7. The trial Court framed 8(eight) issues for decision, namely--

1. Whether the suit is maintainable in its present form?

2. Whether there is any cause of action?
3. Whether the suit is barred by limitation?
4. Whether the notice u/s. 80(1) of C.P.C. was valid one?
5. Whether the plaintiffs have any right title and interest over the suit land?
6. Whether the order passed by the settlement officer is arbitrarily, illegal and liable to be set aside?
7. Whether the plaintiffs are entitled to the decree as prayed for?
8. To what relief-reliefs the parties are entitled?

8. Evidence was recorded as adduced by both side and considering the pleadings and evidence the trial Court decided all the material issues in favour of the plaintiffs and decreed the suit with the following order--

It is declared that the plaintiffs have right, title and interest over the suit land. It is further declared that the plaintiffs are entitled to get the record of rights over the suit land corrected in their names in the relevant khatian U/S. 11(4) of the T.L.R. & L.R. Act 1960 and subsequently entitled to get adequate award compensation for the acquired suit land therefore the defendants are directed to make correction of the record of right over the suit land immediately and arrange award compensation over the acquired suit land.

AND

The report of the Survey Commissioner along with man and field book etc marked as Exbt. 5 and 6 series shall be treated as part of decree.

9. Aggrieved, the defendants preferred Title Appeal No. 9 of 1997 and the learned Addl. District Judge(Fast Track Court) by judgment dated 04.10.2002 allowed the appeal partly and dismissed it partly. The appellate Court held--

8. Accordingly, I find it convenient to confirm the Judgment and order passed by Ld. Trial Court to the extent noted above and with the modification with regard to the declaration of entitlement to the compensation award. To make more clear, I upheld the Judgment and order of the Ld. Court below to the effect that the plaintiffs have right, title and interest over the suit land including the land where embankment has been constructed. The record of right are to be rectified accordingly. However, I do not confirm the judgment and order that plaintiffs are entitled to get adequate award in this suit for the acquired suit land directing the defendants to arrange award compensation over the acquired suit land.

The suit be decreed accordingly.

Send back the L.C. record along with a copy of this judgment.

Signed and announced in the open Court.

10. Learned counsel, Mr. Majumder appearing on behalf of the appellants with all his fairness has submitted that he likes to confine himself within the substantial questions of law and he argued that the suit land being merged in the stream of Laxmicherra was recorded in khas khatian and since Notification u/s 4 of the L.A. Act was issued in 1982 the plaintiffs lost their right title and interest, if any, and they were not entitled to get any relief what is allowed by the trial Court and affirmed by the appellate Court.

Learned counsel, Mr. Chakma, on the other hand, has submitted that the plaintiffs were the owners of the suit land and they have proved their ownership. Recording in the khas khatian was wrongly made which was challenged in proper forum and the trial Court rightly decreed the suit. The appellate Court has also considered the issue and rightly dismissed the appeal. He supported the judgments passed by the trial Court and the appellate Court.

11. The trial Court, as I find, decreed the suit holding that the plaintiffs have right title interest over the suit land and they are entitled to get the record of rights corrected in their names. The trial Court also decreed the suit holding that for acquisition and for construction of embankment of the suit land the respondents are bound to make payment of compensation.

Whereas, the appellate Court upheld the decree of the trial Court to the extent that the plaintiffs are entitled to get declaration of right title and interest over the suit land and also entitled to get correction of the RoR but set aside the other part of the relief that the plaintiffs entitled to get compensation for acquisition. That part of the judgment, passed by the appellate Court rejecting the part decree in respect of the compensation has not been challenged by the plaintiffs and so it stands good.

12. The appellate Court, as I find, considered the critical aspects in respect of the relief sought u/s 34 of the Specific Relief Act. No doubt, a notification was made u/s 4 of the L.A. Act including the suit land but such notification cannot altogether disentitle the plaintiffs from seeking declaration or right title and interest over the suit land. I cannot agree with the submission of learned counsel, Mr. Majumder that the suit land being merged in the stream of Laxmicherra was rightly recorded as khas land and, therefore, the plaintiffs are not entitled to get any relief. It is proved with all material evidence that the suit land is jote land of the plaintiffs and so they are legally entitled to get a decree of declaration on their right title and interest and correction of record of rights. The embankment has already been constructed but the appellate Court rejected the prayer of the plaintiffs in respect of compensation and since the plaintiffs did not prefer any appeal against the appellate judgment no relief can be given to the plaintiffs, i.e. the respondents. I find no illegality or impropriety in the appellate judgment passed by the learned Addl. District Judge in Title Appeal No. 9 of 1997 in respect of declaration of right title and interest of the plaintiffs over the suit land and further declaration regarding correction of the record of rights and, hence, the appeal is found to be devoid of merit and accordingly it stands

dismissed.

13. Send back the L.C. records along with a copy of this judgment.

14. Parties to bear their own costs.