

Buduma Mili and Another Vs. Marka Mili and Another

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Court : Guwahati

Decided On : Feb-03-2015

Judge : Hrishikesh Roy

Appeal No. : CRP No. 35 of 2009

Appellant : Buduma Mili and Another

Respondent : Marka Mili and Another

Judgement :

1. Heard Mr. R. Sarma, the learned Counsel appearing for the petitioners (defendants). The respondents (plaintiffs) are represented by the learned Counsel Mr. B. Padun.

2. The Title Suit No.8/2007 was filed for restoration of possession under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as the 1963 Act). It was alleged in the plaint that the plaintiff No.1s cousin brother (defendant No.1) on 26.1.2007 forcibly dispossessed the plaintiffs from the suit land. The suit was decreed on 29.11.2008 (Annexure-3) by the learned Civil Judge, Lakhimpur by declaring the right, title and interest of the plaintiffs over the suit land and also for recovery of possession from the defendants.

3. Assailing the legality of the impugned decree, the defendants submit that since recovery of Government land was sought in the case, the suit was not maintainable under Sub-Clause (b) of the Section 6(2) of the 1963 Act. Moreover,

since the title was declared in summary proceeding under the 1963 Act, the petitioners contend that the decree was without jurisdiction.

4. In support of his contention, Mr. R. Sarma, the learned Counsel for the petitioners cites *Kailash Kalita vs. Sanjib Sharma* reported in 2006 (Suppl.) GLT 750 to project that in a restoration proceeding under Section 6 of the 1963 Act, the Court should answer the issue on illegal dispossession and title shouldn't be the concern of the Court in such suits.

5. Supporting the decree, the plaintiffs however contend that the Government authorities were made pro-forma defendants in the suit and therefore there is no legal bar for the restoration suit, under Clause (b) of Section 6(2) of the 1963 Act. Referring to the basis whereby the title of the plaintiffs was declared, the learned Counsel argues that the said finding is based on relevant materials.

6. It was pleaded by the plaintiffs themselves in paragraph 10 of the plaint that the suit land is Government land for which the plaintiffs had applied for allotment to the Government. In the event of denial to this pleading, the plaintiffs sought impleadment of the Government as the main defendants (instead of pro-forma) in the suit. The Circle Officer, Nowboicha in the W.S. filed on behalf of the pro-forma defendants contented that the suit land is Government land where neither plaintiffs nor defendants have any right/title. Moreover, the Touzi paid by the plaintiffs is not revenue in the real sense or in other words, it was fine collected by the Government from encroachers of Government land.

7. From the above pleadings, it is clear that the Circle Officer, Nowboicha on behalf of the pro-forma defendants denied the right/title of the plaintiffs over the suit land and therefore according to the plaintiffs pleadings under paragraph 10 of the plaint, the pro-forma defendants are to be considered as the contesting defendants. But restoration of possession is barred under Section 6 of the 1963 Act in a suit against Government. Therefore I have no hesitation in declaring that the Title Suit No.8/2007 was defective and was not maintainable under the 1963 Act.

8. Moreover the issue of title is not to be decided in a suit for recovery of possession under the 1963 Act where the only question to be decided is whether the plaintiffs were forcibly dispossessed by the defendants. Therefore in view of the decision in Kailash Kalita (supra), I declare that the learned Trial Court acted beyond jurisdiction in declaring the title of the plaintiffs over the suit land.

9. From the above discussion, I find merit in the case of the Revision petitioners and accordingly the decree dated 29.11.2008 in the Title Suit No.8/2007 rendered by the learned Civil Judge, Lakhimpur, North Lakhimpur is quashed. Consequently the Revision petition is allowed without any order on cost.

10. The Registry is directed to return the L.C.R. with a copy of this order to the concerned court.

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