

Md. Abdul Samad Vs. Abdul Khaleque

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Court : Guwahati

Decided On : Nov-04-2015

Judge : A.K. Goswami

Appeal No. : RSA No. 239 of 2005

Appellant : Md. Abdul Samad

Respondent : Abdul Khaleque

Advocate for Def. : Mr. Sattar

Advocate for Pet/Ap. : Ms. P. Bhattacharjee

Judgement :

Judgment and Order (Oral)

1. Heard Ms P. Bhattacharjee, learned counsel for the appellant. Also heard Mr. A. Sattar, learned counsel appearing for the respondent.

2. This appeal by the plaintiff is directed against the judgment and decree dated 30.7.2005 passed by the learned Civil Judge (Senior Division), Barpeta in Title Appeal No. 30/2004 allowing the appeal of the defendants and setting aside the judgment and decree dated 8.6.2004 passed by the learned Civil Judge (Junior Division) No. 1, Barpeta in Title Suit No. 40/2003 whereby the suit of the plaintiff was decreed and counter-claim of the defendants was dismissed.

3. The second appeal was admitted to be heard by an order dated 12.12.2005 on the following two substantial questions of law:
1. Whether the findings of the learned lower appellate court that the defendant and late Asrab Ali, father of the plaintiff were the co-owners of the suit land is perverse?
 2. Whether the learned lower appellate court misconstrued the provision of law relating to acquisition of title over immovable property absolutely based on mutation without the right of inheritance, transfer or exchange and merely on the basis of long possession and unauthorized mutation?
 4. It appears that originally three plaintiffs had filed the suit. However, the present appeal is only by the plaintiff No. 1. Other plaintiffs are not arrayed as proforma respondents.
 5. The case of the plaintiffs as projected in the plaint is that Asrab Ali had right, title and interest over a plot of land measuring 2 bigha 5 lecha covered by Dag No. 121 of KP Patta No. 38, which is described in Schedule A to the plaint, and the land was settled with him during the Settlement Operation of 1958-65. Asrab Ali died about 15 years back leaving behind the plaintiff Nos. 1 and 2 and another son, namely, Sayed Ali, who died about four years ago leaving behind his wife and a minor daughter, who are arrayed as plaintiff Nos. 3(a) and 3(b).
 6. On the death of Asrab Ali, names of plaintiff Nos. 1, 2 and 3 were recorded by way of mutation on 21.3.1989 in respect of the entire Schedule A land. On 5.11.2002, the defendant, accompanied by labourers, who were armed with deadly weapons, such as dao, sword and lathi, forcibly occupied southern part of Schedule A land measuring 1 bigha 3 lecha, more fully described in Schedule B to the plaint, and constructed a dwelling house. On being asked, a plea was taken by the defendant that he had entered his name in the Revenue Record as a co-sharer of Schedule A land and was owner to the extent of 1 bigha 3 lecha. Enquiries made by the plaintiffs revealed that in the Revenue Record, the name of the defendant was recorded along with the original pattadar by an order of the Sub-Deputy Collector dated 19.11.1973. It is pleaded that when the plaintiffs obtained

mutation on 21.3.1989 or on 19.10.2002, when the plaintiffs obtained certified copies of the Jamabandi, the same did not show mutation of the name of the defendant and therefore, it is clear that fraudulent entries were made. Accordingly, the plaintiffs prayed for declaration of right, title and interest over the suit land, which is Schedule B land, and also a declaration that the defendant had no title over the suit land; declaration that mutation obtained on 19.11.1973 is fraudulent and inoperative; issue of precept to the Revenue Authority to delete the name of the defendant from the Revenue Record; delivery of khas possession to the plaintiffs by evicting the defendant; etc.

7. In the written statement and the counter-claim, the defendant had pleaded that Asrab Ali and the defendant were in possession of 2 bigha 5 lecha land when the land was government land and patta in respect of Schedule A was issued in the name of the father of the plaintiffs and defendant continued to remain on the suit land and subsequently, at the instance of Asrab Ali, the name of the defendant was also recorded as pattadar in respect of 1 bigha 3 lecha of land as he was in possession of the same. Thus, he is in possession of the same for last 43 years. It is also pleaded that Asrab Ali never raised any objection and that names of the plaintiffs were recorded after the name of the defendant was recorded on 19.11.1973. The plaintiffs prayer for cancellation of mutation was declined and thereafter, an appeal was also preferred by the plaintiffs, which was pending disposal at the time of filing of the suit. Accordingly, the defendant prayed for declaration of his right, title and interest and confirmation of possession in respect of Schedule B land; for partition, etc.

8. Against the counter-claim, the plaintiffs filed written statement, primarily contending that the counter-claim is barred under Section 154 of the Assam Land and Revenue Regulation, 1886. While denying the various statements, it is pleaded that without getting the patta in favour of Asrab Ali cancelled and without there being any deed of conveyance, etc., the defendant fraudulently obtained mutation.

9. On the basis of the pleadings, the learned trial court framed the following issues:

- (i) Whether there is any cause of action for the suit as well as the counter-claim of the defendant?
- (ii) Whether the suit of the plaintiff as well as the counter-claim of the defendant are barred by law of limitation?
- (iii) Whether the plaintiff has right, title and interest over the suit land and the defendant dispossessed them from the suit land on 5.11.2002?
- (iv) Whether the mutation over the suit land in favour of the defendant dated 19.11.73 was fraudulent and inoperative in the eyes of law?
- (v) Whether the defendant has right, title interest and possession over the B Schedule described in the Schedule of the counter-claim?
- (vi) Whether the plaintiffs are entitled to get decree as prayed for?
- (vii) Whether the defendant is entitled to get a decree as claimed in the counter-claim?
- (viii) What other relief or reliefs the parties are entitled to?

10. Both the sides adduced evidence of three witnesses.

11. The learned trial court observed that it is an admitted fact that the father of the plaintiffs was the original pattadar in respect of Schedule A land. A finding was recorded by the learned trial court that the case of the defendant for right, title and interest in respect of Schedule B land being based on mutation entries, the defendant cannot have right, title and interest as mutation entries do not confer right, title and interest. Accordingly, on the above premises, the suit of the plaintiffs was decreed and the counter-claim was dismissed.

12. The learned lower appellate court held that the defendant is a co-owner of the Schedule A property of the plaint and had acquired right, title and interest over Schedule B of the plaint. It was held that the plaintiffs failed to prove their dispossession on 5.11.2002. In view of the mutation effected in favour of the defendant, a finding was recorded that the defendant had right, title, interest and

possession in respect of Schedule B land and accordingly, decreed the counter-claim and at the same time dismissed the suit of the plaintiff.

13. Ms P Bhattacharjee, learned counsel for the appellant has submitted that the learned lower appellate court, without there being any material on record, held the defendant to be a co-owner along with the predecessor-in-interest of the plaintiffs. She has also submitted that right, title and interest was decreed in favour of the defendant in respect of Schedule B land only on the ground of mutation of the name of the defendant ignoring the established proposition of law that mutation entries neither create nor confer title. It is also submitted by her that the mutation entries were also made without following the procedure prescribed. The possession of the defendant, at any rate, is unauthorized and in absence of any plea of adverse possession, the defendant is liable to be ejected when the plaintiffs established their right, title and interest over the suit land, she submits.

14. Mr. Sattar, learned counsel for the respondent/defendant, has submitted that the plaintiffs also failed to prove right, title and interest in respect of Schedule A land as only the copy of the Jamabandi was exhibited by the plaintiffs as Ext. 1, and therefore, the suit of the plaintiffs is also liable to be dismissed. Mr. Sattar does not dispute that right, title and interest of the defendant is based on the mutation entry but he submits that the defendant is in possession of Schedule B land from the time of the predecessor-in-interest of the plaintiffs and the predecessor-in-interest of the plaintiffs never objected to such possession of the defendant. He has submitted that even if the defendant is not entitled to a decree in the counter-claim, the position of the plaintiffs is also no better than that of the defendant as the house of the defendant was raised during the lifetime of Asrab Ali, to which he never objected.

15. I have considered the submissions of the learned counsel for the parties and have also perused the materials on record.

16. It is not in dispute that Schedule A land measuring 2 bigha 5 lecha is covered by Dag No. 121 of K. Patta No. 38. In the written statement-cum-counter-claim there is an admission on the part of the defendant that patta of Schedule A land was issued in the name of the father of the plaintiffs. In his evidence as DW 1 also,

he has stated that Asrab Ali, the predecessor-in-interest of the plaintiffs, was the pattadar. The patta is a document of title and therefore, there is admission on the part of the defendant that the predecessor-in-interest of the appellant had right, title and interest in respect of Schedule A land and therefore, I am unable to accept the submission of Mr. Sattar that the plaintiffs failed to prove their right, title and interest in respect of Schedule A land.

17. To be termed as co-owners, the right of each owner should be coordinate with other owners. Where several persons acquire undivided shares in a property they become co-owners of the property; or where the owner of a property transfers a share in the property to another, the transferee becomes a co-owner along with the original owner. The learned lower appellate court, as it appears, held the defendant to be a co-owner only because of the fact that his name was also mutated in the Record of Rights. No transfer of any part of the land and more particularly, Schedule B land was made by the pattadar to the defendant.

18. Once a patta is issued in favour of a person he becomes the rightful owner in respect of the plot of land covered under the patta and in order to enable any other person to claim that he is a co-owner, there has to be a transfer, which is not so in the instant case. The case of the defendant is that the Circle Officer allowed mutation when Asrab Ali had gone with him to the Circle Officer for recording the name of the defendant in the Jamabandi. In his evidence, DW 1 had stated that mutation had taken place after periodic patta was issued. Ext. Ka had an endorsement showing that the name of the defendant was mutated along with the original pattadar as share-holder, without however, indicating the basis thereof. It is not understood how in absence of any deed of transfer, one can be termed as share-holder with the original pattadar. Mutation of the property in the Revenue Record does not create or extinguish title and the same has no presumptive value of title. It only enables a person in whose favour mutation is ordered to pay the land revenue in question. The court is alive to the proposition that mutation entries may not be the basis of title and, yet, such entries may not be brushed aside altogether and that it must receive due consideration at the hands of the court. Going by the noting in Ext. Ka, it has to be held that there is no discernible basis for treating the defendant as a share-holder or in other words, a co-owner. Once

the plaintiffs established right, title and interest, long possession of the defendant, even if held in favour of the defendant, cannot defeat the claim of the plaintiffs.

19. In view of the above discussions, I am of the considered opinion that this appeal deserves to be allowed and accordingly, the appeal is allowed. The impugned judgment of the learned lower appellate court is set aside and the decree of the learned trial court is restored. No cost.

20. Registry will send back the records.

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