

Sheikh Akub Ali and anr. Vs. Askar Ali Bepari and ors.

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Court : Kolkata

Decided On : Dec-14-1920

Reported in : 64Ind.Cas.305

Judge : Syed Shamsul Huda, J.

Appellant : Sheikh Akub Ali and anr.

Respondent : Askar Ali Bepari and ors.

Judgement :

Syed Shamsul Huda, J.

1. The plaintiffs are the appellants before this Court, and this appeal arises out of a suit brought by them for possession of some plots of land on declaration of their title. In this appeal I am only concerned with plot No. 1 of the plaint. That plot is described in the plaint by boundaries and also by dag No. 21 of the Settlement khatian. When the suit was still pending in the first Court, an application was made by the plaintiffs to amend the plaint by adding dag No. 186 also in the disruption, on the ground that the boundaries given in the plaint which included the tank in suit and its banks were not identical with dag No. 21 only but included besides dag No. 21 lands of dag No. 186 also. This application was rejected as being too late. Subsequently the plaintiffs applied for amendment of the plaint by deletion of the dag number altogether and asked for a decree on the basis of the boundaries only. The learned, Munsif allowed the amendment of the plaint in that way, that is

to say, plot No, 1 was described by boundaries only without any dag number. There is nothing in law which compels a plaintiff in a suit for possession to describe the land in suit by dag numbers also and, therefore, I think the Munsif was right in allowing the amendment by deletion of the dag number. When, however, he came to decide the suit, he discussed the question whether dag No. 186 was included within the tank and its banks as described by the boundaries in the plaint and upon answering that question in the affirmative, he passed a decree in favour of the plaintiffs on the basis of the boundaries as well as by describing the land as covered by dag Nos. 21 and 186. This was, in my opinion, an error on the part of the Munsif and this error led to an appeal by the defendants, who objected to the decree of the first Court in so far as it included dag No. 186 as part of the land decreed and the Court below having come to the conclusion that dag No, 186 was outside the tank and its banks, passed in favour of the plaintiffs a decree for dag No. 21 only on the assumption that the boundaries covered dag No. 21 only.

2. On appeal before me it is urged that the proper course for the lower Appellate Court was to give a decree to the plaintiffs on the basis of the boundaries given in the plaint without reference to the dag numbers. The Appellate Court, however, thinks that as the order directing the amendment of the plaint by deletion of the dag numbers was passed without notice to the absent defendants, that amendment could not have been given effect to. It, however, appears that the absent defendants made no grievance about the amendment. They never appeared before him and it cannot be said that the amendment prejudiced them in any way. I may notice that the boundaries given in the plaint are the same as those given in the Miras Pottah by which the plaintiffs' tenancy was created, and as the amendment was allowed by the Munsif and he by an error did not give effect to the amendment, I think the plaintiffs are entitled to claim that a decree should be passed in their favour on the basis of the boundaries given in the plaint without reference to the dag numbers. In this view I modify the decree of the Appeal Court to the extent indicated. But as I think that the plaintiffs were not sufficiently diligent in seeing that the amendment order was carried out and a proper decree drawn up, the parties should bear their own costs in this Court and in the lower Appellate Court.

3. There is also a cross-objection which is pressed before me. That refers to the arable lands. As regards the arable lands, both the Courts have come to the conclusion that they form a part of the plaintiffs' tenancy. The argument of the learned Vakil for the cross-appellant is that the settlement of these lands was obtained by means of a hukumnama and that hukumnama, not being a registered document, could not be proved in the case and was inadmissible in evidence. On this point the lower Appellate Court says, and in my opinion rightly, that the tenancy in this case could be proved independently of the hukumnama, and relied on other evidence excluding the hukumnama from consideration and has come to the conclusion that the arable lands formed a part of the plaintiffs' tenancy. For the reasons given by that Court, I think its decision is right and I dismiss the cross-objection with costs.