

CIVIL APPEAL

Present: The Hon'ble Mr. Justice Tarun Kumar Gupta

Judgment on 03.09.2010

S.A. No.239 of 1996

Jagannath Ghosh and another

Versus

The State of West Bengal and Ors.

Points:

Mutation - Whether mere payment of rent and acceptance of the same by the State without prejudice can create title if mutation is not proved-Onus of proof mutation whether lies on the person who claims title on the basis of mutation.- West Bengal Estate Acquisition Act, 1953 S 44(2a)

Facts:

The appellant's alleged that the predecessor in interest, Subinoy Ghosh, took settlement of the suit property along with other properties from Sri Sri Lakshmi Narayan Deb Thakur through its sebit Soumendra Chandra Nandi in the year 1359 B.S. Since then Subinoy Ghosh started to possess the same exclusively and he was also recognized as a tenant by the State of West Bengal by way of accepting rent and granting of 'dakhilas'. Later on Subinoy Ghosh had to file a Title Suit against one Dindar Mirza and others who tried to interfere with his possession in the suit property and other properties taking advantage of erroneous recording of those properties in their name in R.S.R.O.R. The said suit ultimately ended in compromise admitting Subinoy's title over the suit property and other properties. Later on an objection under Section 44(2a) of West Bengal Estate Acquisition Act, 1953 was filed by the sebit, Soumendra Chandra Nandi. In case No.10 dated 06.09.1960 Revenue Officer rejected the said objection resulting filing of an appeal being No.1030 of 1960 under Section 44(3) of Estate Acquisition Act in the Tribunal. Learned Tribunal allowed the said appeal

with the direction to cancel the name of Dindar Mirza in Khatian No.21 of Mouza Naginabag and to substitute the name of Soumendra Chandra Nandi as sebaite of Sri Sri Sri Lakshmi Narayan Deb Thakur with a further direction to make necessary correction in sub-Khatian No.32 and 33 of the same Mouza. Said judgment was passed by Additional District Judge being Tribunal vide order dated 19.04.1962. While possessing the suit property Subinoy Ghosh transferred the same in favour of the plaintiffs by registered Khabala dated 13.12.1971 on receipt of valuable consideration. State contested the said suit by filing written statement contending inter alia that there was no valid settlement in favour of Subinoy Ghosh and that rent receipts were granted "without prejudice" and that defendant/State was not a party in Title Suit No.240 of 1959 and that judgment thereof was not binding upon the State and that plaintiffs did not acquire any title from Subinoy Ghosh.. The suit was decreed but the appellate court reversed the decree.

Held:

No notice was also sent upon State for producing the records, if any, relating to said alleged mutation Case No.82 /60-61. It was the duty of the appellants/ plaintiffs to call for said records from State to establish mutation of suit lands in favour of Subinoy vide alleged mutation Case No.82/60-61. It was not the duty of the respondent / State to give negative proof that there was no mutation in favour of Subinoy.

Para 7

If mutation is not proved then mere payment of rent and acceptance of the same by the State without prejudice cannot create title in favour of the tenderer of the rent.

Para 8

The suit plots were all along shown as orchard i.e., nonagricultural land. At no point of time either 'Debattar' estate through its sebaite or Subinoy raised any objection for said recording orchard or prayed for correcting the recording as agricultural land. Admittedly, said recordings have a presumptive value of correctness so long it is not rebutted. As no step was

taken for making correction of said recording of 'orchard' as the nature of land, it is to be accepted that the suit plots were non-agricultural land and that a registered document was required for transfer of the same to Subinoy Ghosh. Admittedly, no such document is coming forth in this case. Admittedly, if appellants fail to establish Subinoy's title in the suit plots then their case is bound to fail. Para 10

Cases cited:

1980 (2) CLJ 1, (Panchu Molla v. State of West Bengal & Ors.); 2002 (3) CHN 13, (Profulla Kumar Shome v. State of West Bengal & Ors.); 2003 (1) CLJ 22, (Atul Chandra Mahato & Ors. V. State of West Bengal & Ors.).

For the appellants:- Mr. Swapan Kumar Mallick

Mr. Haque

For the respondent: Mr. Chandra Shekar Das

Mr. Ziaul Islam

Tarun Kumar Gupta, J.:-

This appeal is directed against judgment and decree dated 17th February, 1995 and 24th February, 1995 respectively passed by learned Additional District Judge, First Court, Murshidabad in Title Appeal No.140 of 1994. By the impugned judgment learned First Appellate Court reversed the judgment and decree dated 17th May, 1994 and 24th May, 1994 respectively passed by learned Munsif, Lal Bagh decreeing the Title Suit No.37 of 1993.

2. The plaint case is that the appellant's / plaintiff's predecessor in interest, one Subinoy Ghosh took settlement of the suit property along with other properties from Sri Sri Lakshmi Narayan Deb Thakur through its sebaite Soumendra Chandra Nandi at a rental of Rs.39 and 7 pie per year in the year 1359 B.S. Since then Subinoy Ghosh started to possess the same exclusively and he was also recognized as a tenant by the State of West Bengal by way

of accepting rent and granting of 'dakhilas'. Later on Subinoy Ghosh had to file a Title Suit No.240 of 1959 in the Court of 2nd Munsif, 2nd Court, Berhampur, Murshidabad against one Dindar Mirza and others who tried to interfere with his possession in the suit property and other properties taking advantage of erroneous recording of those properties in their name in R.S.R.O.R. The said suit ultimately ended in compromise admitting Subinoy's title over the suit property and other properties. Later on an objection under Section 44(2a) of West Bengal Estate Acquisition Act, 1953 was filed by the sebit, Soumendra Chandra Nandi. In case No.10 dated 06.09.1960 Revenue Officer rejected the said objection resulting filing of an appeal being No.1030 of 1960 under Section 44(3) of Estate Acquisition Act in the Tribunal. Learned Tribunal allowed the said appeal with the direction to cancel the name of Dindar Mirza in Khatian No.21 of Mouza Naginabag and to substitute the name of Soumendra Chandra Nandi as sebit of Sri Sri Sri Lakshmi Narayan Deb Thakur with a further direction to make necessary correction in sub-Khatian No.32 and 33 of the same Mouza. Said judgment was passed by Additional District Judge being Tribunal vide order dated 19.04.1962. While possessing the suit property Subinoy Ghosh transferred the same in favour of the plaintiffs by registered Kobala dated 13.12.1971 on receipt of valuable consideration and since then the plaintiffs were in possession of the same by constructing dwelling house thereupon and planting trees and by rearing fish in the pond and through cultivation. The plaintiff also paid rents to State as well as to the Municipality but on 20.04.1988 there was threatening from the side of the Government for dispossession of the plaintiffs therefrom alleging that suit land was recorded in R.S.R.O.R in the name of Sri Sri Lakshi Narayan Deb Thakur and the same was vested to the State. This prompted the appellants/plaintiffs to file said Title Suit. Respondent /defendant / State contested the said suit by filing written statement denying all material allegations and contending inter alia

that there was no valid settlement in favour of Subinoy Ghosh and that rent receipts were granted “without prejudice” and that defendant/State was not a party in Title Suit No.240 of 1959 and that judgment thereof was not binding upon the State and that plaintiffs did not acquire any title from Subinoy Ghosh and the suit was liable to be dismissed.

3. On the basis of evidence on record, both oral and documentary, learned Trial Court decreed the suit in favour of appellants/ plaintiffs. However, learned First Appellate Court on reappreciation of the materials on record reversed said judgment of Trial Court.

4. The substantial question of law to be involved in this case is whether learned First Appellate Court committed gross error at the time of appreciation of evidence on record and thereby passed a perverse judgment by way of reversing the decree passed by the Trial Court. Admittedly, the appellants/plaintiffs have traced their title to the suit property through their vendor Subinoy Ghosh, who according to them, took the settlement of the suit plots from Sri Sri Lakshi Narayan Deb Thakur in the year 1359 B.S. at a rental of Rs.39 and 7 pie, through its sebit. The main contention of respondent / State is that appellants / plaintiffs’ vendor Subinoy Ghosh had no title to the suit plots at any point of time. As such the entire case hinges upon one point namely whether appellants’ / plaintiffs’ vendor Subinoy Ghosh had any title to the suit plots. In order to prove their case, the appellants/ plaintiffs filed in the Trial Court some documents which were admitted into evidence after objections. Those were certified copy of the plaint of Title Suit No.240 of 1959 (Ext.1), certified copy of decree of solenama in Title Suit No.240 of 1959 (Ext.2) collectively, certified copy of Order No.1 dated 31.03.1959 in Title Suit No.240 of 1959 (Ext.3), certified copies of Order Nos. 1, 2 and 3 of Title Suit No.240 of 1959 (Ext.3A, 3B and 3C), R.S. Khatian Nos. 82, 33 and 21 (Exts. 4, 4(A) and 4(B), certified copy of Case No.10 under Section 44(2) of West Bengal Estate Acquisition

Act (Ext.5), certified copy of judgment of appeal No.1030 of 1960 under Section 44(3) of West Bengal Estate Acquisition Act (Ext.6), certified copy of the memo of appeal No.1030 of 1960 (Ext.7), registered deed dated 13.01.1971 executed by Subinoy Ghosh in favour of the plaintiffs (Ext.8), tax receipts of municipality (Ext.9), copy of notice under Section 80 C. P.C. (Ext.10), postal receipt and A.D. card [Ext.10(A) and 10 (B)], rent receipts (Ext.11 series). The appellants/plaintiffs also adduced oral evidence of several witnesses including plaintiff.

5. Mr. Swapan Kumar Mallick learned advocate for the appellants has submitted that those documents coupled with evidence of P.W.s. particularly P.W.3 (Ex-Tahasildar) established beyond any trace of doubt that Subinoy Ghosh took settlement of the suit plots from the sebit of Sri Sri Lakshi Narayan Deb Thakur in the year 1359 B.S. and that while he was in possession by payment of rent and taxes, sold the same to the present plaintiffs in 1971 and that thereafter plaintiffs stepped into shoes of Subinoy Ghosh and started to possess the suit land as owner on payment of rent and taxes. In this connection, he has further submitted that while Subinoy Ghosh was in possession of the suit plots after taking said settlement there was erroneous recording of names of one Dindar Mirza and others in the concerned record of right and that taking advantage of the said recordings they tried to interfere with possession of Subinoy Ghosh who filed a Title Suit No.240 of 1959 in the Court of learned Munsif, 2nd Court at Berhampur, Murshidabad against Dindar Mirza and others and that he obtained a compromise decree in said suit establishing his title and possession over suit property. He has further submitted that in view of said wrong recordings in R.S.R.O.R. Soumendra Chandra Nandi filed an objection under Section 44 (2a) of the West Bengal Estate Acquisition Act, 1953 being Case No.10 and that though Revenue Officer rejected the same vide Order 06.09.1960, Sri Nandi filed an appeal being No.1030 of 1960

under Section 44 (3) of the Estate Acquisition Act in the Tribunal and that after contested hearing learned Tribunal allowed the said appeal with the direction to cancel the name of Dindar Mirza in Khatian No.21 and to substitute the name of Soumendra Chandra Nandi as sebaite of Sri Sri Lakshi Narayan Deb Thakur with a further direction to make necessary correction in sub-Khatian Nos. 32 and 33 of the same Mouza. He has further submitted that Sri Subinoy Ghosh paid rent to the State and that State accepted the said rents by issuing 'Dakhilas' after mutating the name of Subinoy Ghosh. According to him, the State is now estopped from challenging the title of Subinoy Ghosh over suit plots. In this connection, Sri Mallick, learned Advocate, has referred a case law reported in 1980 (2) CLJ page 1 (Panchu Molla v. State of West Bengal & Ors.) wherein Hon'ble Court held that when the State Government has mutated the name of the petitioner as tenant and has accepted rents from him as a tenant the State Government cannot treat the said land as a vested land as the State Government has recognized the tenancy of the person by said Act. In this connection, he has further referred a case law reported in 2002 (3) CHN page 13 (Profulla Kumar Shome v. State of West Bengal & Ors.) wherein Hon'ble Division Bench of this Court held that though mere mutation in the revenue records does not create any title to the land in respect of whereof such mutation is affected but the proposition of law as explained in the Panchu Molla's case is a little different and still holds good. According to Hon'ble Court in Pachu Molla's case the mutation was followed by acceptance of rent showing creation of fresh tenancy in favour of the person concerned by the State.

6. Mr. Chandra Shekar Das learned advocate for the respondent /State, on the other hand, has submitted that no paper either of settlement of suit land in favour of Subinoy Ghosh by the sebaite of the 'Debattar' estate or payment of rent by Subinoy Ghosh to said estate was filed in this case. He has further submitted that as per notings in the record of right the suit plots were

orchard i.e., non-agricultural land and that settlement, if any, should have been made under registered document in view of Section 107 of T. P. Act but no such document is coming before this Court. He has further submitted that the alleged compromise decree in Title Suit No.240 of 1959 was not binding on the State not being a party. According to him, though the main grievance in said case was threatening to the title of Subinoy in the suit plots on the ground of wrong recordings in record of right in the name of Dindar Mirza and others, but State being necessary party was not brought on the record. In this connection, he has further submitted that 'Dakhilas' were issued without prejudice to the rights and contentions of the State and hence 'Dakhilas' would not create any title in favour of Subinoy Ghosh, the vendor of the plaintiffs. In reply, Mr. Mallick learned Advocate for the appellants /plaintiffs has submitted that P.W.3 being Ex- Tehasildar' deposed and proved the 'Dakhilas' wherefrom it appears that mutation case number was noted upon one of the 'Dakhilas' to show mutation was made in favour of Subinoy Ghosh. According to him, ratio of Panchu Molla's case (ibid) is squarely applicable in this case and that State Government is now estopped from challenging the tenancy of Subinoy Ghosh in the suit plot.

7. Admittedly, respondent /State was not a party to the Title Suit No.240 of 1959 brought by Subinoy Ghosh against Dindar Mirza and others and hence State was not bound by said compromise decree. It appears that P.W.6 (Ex- Tehasildar) deposed in his personal capacity without being summoned and that he was a close relative of the party. It is true in one of the Dakhilas' mutation case No.82/60-61 ['Dakhila' Ext.11(c)] was written. 'Dakhila' is a printed form having different columns to be filled up. There is no column for noting mutation case number upon a 'Dakhila'. Admittedly, no copy of petition was filed to show that Subinoy Ghosh ever approached to the State for mutation of his name in respect of suit plots. Again, no notice was also sent upon State for producing the records, if any, relating to said alleged

mutation Case No.82 /60-61. It was the duty of the appellants/ plaintiffs to call for said records from State to establish mutation of suit lands in favour of Subinoy vide alleged mutation Case No.82/60-61. It was not the duty of the respondent / State to give negative proof that there was no mutation in favour of Subinoy.

8. Under the facts and circumstances I find no infirmity in the findings of learned First Appellate Court that appellants /plaintiffs failed to establish mutation of suit lands in favour of Subinoy. Admittedly, if mutation is not proved then mere payment of rent and acceptance of the same by the State without prejudice cannot create title in favour of the tenderer of the rent.

9. It is not at all clear when Subinoy was alleged to be in possession of the suit plots through settlement of 1952 (1359 B.S.) from the 'Debattar' estate, why Soumendra Chandra Nandi being sebaite of the said estate had to file an objection under Section 44 (2a) of West Bengal Estate Acquisition Act followed by an appeal under Section 44(3) of the same Act challenging recording of the names of Dindar Mirza and others in the record of right. It is true that in the petition as well as in the appeal under Section 44(3) of said Act the name of Subinoy Ghosh as well as compromise decree came to surface but in the final order there was no direction for recording the Khatian in the name of Subinoy. Rather the order was in favour of 'Debattar' estate to be represented through its sebaite Soumendra Chandra Nandi. No explanation in this regard could be given by appellants/ plaintiffs.

10. In the record of right the suit plots were all along shown as orchard i.e., nonagricultural land. At no point of time either 'Debattar' estate through its sebaite or Subinoy raised any objection for said recording orchard or prayed for correcting the recording as agricultural land. Admittedly, said recordings have a presumptive value of correctness so long it is not rebutted. As no step was taken for making correction of said recording of 'orchard' as the nature of land, it is to be accepted that the suit plots were non-agricultural land and

that a registered document was required for transfer of the same to Subinoy Ghosh. Admittedly, no such document is coming forth in this case. Admittedly, if appellants fail to establish Subinoy's title in the suit plots then their case is bound to fail.

11. I find from the judgment of learned First Appellate Court that he considered the evidence on record meticulously and came to the correct finding that the appellants / plaintiffs failed to establish that Subinoy Ghosh had title in the suit plots or that plaintiffs got any title in suit plots through Subinoy Ghosh.

12. The last but not the least contention of Mr. Mallick is that before vesting no notice was served upon Subinoy Ghosh as a person in possession and hence order of vesting was bad. In support of his contention he has referred a case law reported in 2003 (1) CLJ page 22 (Atul Chandra Mahato & Ors. V. State of West Bengal & Ors.).

13. In reply, Sri Chandra Shekar Das learned advocate for the respondents has submitted that at the time of vesting there was nothing in the record of the State to show that Subinoy Ghosh was in possession of the property and rather it came out that 'Debattar' estate through its sebit was in possession of the same. As such, there was no question of giving any notice to Subinoy Ghosh at the time of vesting.

14. I find much force in the aforesaid submission of learned advocate of the respondent /State. Even when through a proceeding under Section 44 (3), the name of the 'Debattar' estate through sebit was recorded in the record of right as per order of learned Tribunal, there was no objection from any side including Subinoy Ghosh.

15. In view of the aforesaid discussions I am of the opinion that the impugned judgment of learned First Appellate Court cannot be said to be perverse on appreciation of evidence on record and that impugned judgment

does not call for any interference from this Court of Second Appeal. As a result, the appeal fails. However, I pass no order as to costs.

16. Office is directed to send down L.C.R. along with a copy of the judgment to the Lower Court at the earliest.

(Tarun Kumar Gupta, J.)