

GAHC010113262016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3496/2016

DEBI PRASAD AGARWALA FOGLA and ANR

2: RADHESHYAM AGARWALA FOGLA
BOTH ARE S/O LT. HARIBUX AGARWALA FOGLA
BOTH ARE R/O RONGAGORA ROAD
TINSUKIA
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE DEPTT. OF REVENUE
GOVT. OF ASSAM, DISPUR, GHY-6

2:THE DY. COMMISSIONER
TINSUKIA

3:THE ADDL. DY. COMMISSIONER R
TINSUKIA

4:THE CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
TINSUKIA
ASSAM

5:MUKESH FOGLA
S/O LT. GOVIND PRASAD AGARWALA FOGLA
M/S KWALITY
PAPER MERCHANT
R/O RONGAGORA ROAD
P.O. TINSUKIA
PIN-78612

Advocate for the Petitioner : MR.S P ROY

Advocate for the Respondent : MR.B DASR-5

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 15.05.2024

Heard Mr. G. N. Sahewala, learned Senior Counsel assisted by Mr. M. Sahewala, learned counsel for the petitioner. Also heard Mr. K. Agarwala, learned Senior Counsel assisted by Ms. P Neog, learned counsel for respondent No. 5 and Ms. S. Baruah, learned Junior Government Advocate for the State respondent.

2. By way of this writ petition, the petitioner is assailing the impugned orders dated 26.08.2015 passed by the Deputy Commissioner, Tinsukia and order dated 24.05.2016 passed by the Additional District Commissioner, Tinsukia (Annexure No. 9 and 12 respectively).

3. The case of the petitioner is that Haribux Agarwala and Ganesh Agarwala were the joint owners of a plot of land measuring 3 kathas 13 lechas out of which 15 Lechas was being used as common passage and as such Haribux Agarwala and Ganesh Agarwala remained owner and possessor of 2 kathas 18 Lechas of land covered by Dag No. 3185 of P.P. No. 586, Mouza- Tinsukia, Village- Tinsukia, town sheet No. 7, under Tinsukia Revenue Circle, Tinsukia, Assam. Haribux Agarwala expired leaving behind his wife Kamala Devi Fogla, four sons namely Debi Prasad Agarwala, Balkrishna Agarwala, Govind Prasad

Agarwala and Radheshyam Agarwala and five daughters namely Savitri Devi Bukalsaria, Munia Devi Bajoria, Geeta Devi Dhelia, Bidya Devi Agarawal and Shanti Devi Agarwal, Ganesh Agarwala were unmarried and the mother of the respondents i.e. Kamala Devi Fogla also expired. The five daughters namely Savitri Devi Bukalsaria, Munia Devi Bajoria, Geeta Devi Dhelia, Bidya Devi Agrawal and Shanti Devi Agarwal were married. After the death of Haribux Agarwala by way of inheritance as per Hindu Succession Act, 1956 as applicable on 07.05.68, the names of his four sons i.e. Debi Prasad Agarwala,, Balkrishna Agarwala and, Govind Prasad Agarwala and Radheshyam Agarwalla were mutated vide order dated 07.05.1968 and order dated 07.05.1968 is unchallenged and as such attained finality. The order dated 07.05.1968, is unaffected and as such the daughters of Haribux Agarwala are not entitled to claim any interest in the property by way of inheritance. The property in a question is a self acquired property of late Haribux Agarwalla (Fogla) and Ganesh Narayan Agarwalla (Fogla).

Thereafter, the petitioners had filed an application for partition being Misc. Partition Case No. 80/2013-14 impleading the present private respondent for the land measuring 3 Kathas 13 Lechas covered by P. P. No. 586 Dag No. 3185 of village- Tinsukia, Mouza- Tinsukia. Thereafter the respondent No. 5 had filed his Objection on 11.09.2014 stating that the property in question is ancestral property and after death of Haribux Fogla, his share in the property shall go to his 9 legal heirs; that the partition case is not maintainable due to non-joinder of all the legal heirs of Haribux Fogla. Thereafter the C.O. had heard both parties and passed an Order dated. 10.10.2014 rejected the objection filed by the private respondent holding that process of partition will proceed accordingly and being aggrieved by the Order dated. 10.10.2014 passed by the C.O., the

respondent No. 5 (Dr. Mukesh Fogla) had filed Revenue Appeal No. 9/2014 on 13.11.2014 before the Additional District Commissioner(R), Tinsukia Under section-147 of Assam Land and Revenue Regulation, 1886 challenging the Order dated. 10.10.2014..

Thereafter the Revenue Appeal No. 09/2014 was dismissed by the Additional District Commissioner(R) vide Judgment and order dated 30.07.2015 and against the Order dated 30.07.2015, the respondent No. 5 had preferred a petition under Section-114 read with Order-47, Rule-1 of the Code of Civil Procedure, 1908 on 24.08.2015 for review of the order dated. 30.07.2015 before the District Commissioner and not before the Additional District Commissioner. Thereafter again on 24.08.2015 the respondent No. 5 had also filed an application dated 24.08.2015 praying for stay of the order dated 30.07.2015 passed in Revenue Appeal No. 9/2014. On 26.08.2015, the District Commissioner Tinsukia had passed an order over the body of the said stay petition as follows: A.D.C. (RKG) "*The petition is perused. Also seen the original case records in the RA case. The records and the petitions are returned to A.D.C.(RKG) Smt. Bandana Tamuly with the direction to hear the petitioners once again, giving them an opportunity to present their point which has been allegedly deprived to them and the case disposal may be accordingly made with intimation to the undersigned. Partition shall remain stayed till then.*"

Against the said order dated 26.08.2015 passed by the Deputy Commissioner, Tinsukia, the petitioners have filed W.P.(C) No. 3262/2016 on 26.05.2016, which has been withdrawn on 01.06.2016 with liberty to file fresh petition. Therefore the Additional Deputy Commissioner passed an order on 24.05.2016 to the effect that the dispute to be decided first is in respect of title over which the Revenue Court has no jurisdiction which can be decided by the

Civil Court and accordingly the Appeal was disposed of.

Accordingly this writ petition has been preferred.

4. Mr. G. N. Sahewala, learned Senior Counsel for the petitioner submits that the Court of Deputy Commissioner and Additional Deputy Commissioner, Tinsukia in Revenue Appeal no. 9/2014 filed by the respondent by orders dated 26.08.2015 and 24.05.2016, respectively reviewed and modified the judgment and order dated 30.07.2015 in Revenue Appeal no. 9/2014, without there being any provisions for review in the statute.

5. He further submits that the respondent instead of filing appeal under Section 147A of the Assam Land and Revenue Regulation, 1886 sought review of the order dated 30.07.2015 and as such the order dated 26.08.2015 is without jurisdiction.

6. Mr. K. Agarwala, learned Senior Counsel on the other hand submits that no hearing took place on 30.07.2015 and therefore the Deputy Commissioner, Tinsukia returned the records in the Revenue Appeal Case No. 9/2014 to Additional District Commissioner with direction to hear the petitioner afresh in exercise of its inherent jurisdiction to correct technical errors.

7. In support of the aforesaid submission, he relies upon the decision of the Apex Court in the following judgments:

1. Grindlays Bank Ltd. versus Central Government Industrial Tribunal and others reported in **1980(Supp) SCC 240.**

2. Kapra Mazdoor Ekta Union Versus Birla Cotton Spinning & Weaving Mills and Another reported in **(2005) 13 SCC 777.**

3. Sunitadevi Singhania Hospital Trust and Another –Vs- Union of

India and Another reported in **(2008) 16 SCC 365.**

4. National Insurance Company Ltd., Jabalpur –Vs- Lachhibai Urf Laxmibai and Anothers reported in **(AIR 1997 MP 172).**

5. New India Assurance Company Ltd –Vs- Samar Roy and Another reported in **(2002) 2 GLT 595.**

6. Pranab Dhar –Vs- Rajesh Deb and Another reported in **(2009) 5 GLR 728.**

8. I have heard the parties and perused the materials available on record.

9. It appears that the Deputy Commissioner by order dated 26.08.2015 in the Revenue Appeal filed by the respondent remanded back the record to the Court of Additional Deputy Commissioner and stayed the partition petition until disposal without setting aside the order dated 30.07.2015.

10 Pertinent to state that the Court of Additional Deputy Commissioner, Tinsukia rejected the appeal filed by the respondent by judgment and order dated 30.07.2015. Against the said judgment and order, the respondent No 5 had preferred the Review Petition before the Deputy Commissioner under section 114 of Code of Civil Procedure read with Order XXVI Rule 1. In the aforesaid Review Petition the respondent No.5 also preferred the stay application before the Deputy Commissioner.

11. The Deputy Commissioner on 26.08.2015 in the aforesaid stay petition remanded the record back to the Additional Deputy Commissioner and stayed the partition petition until disposal.

12. Thereafter the Additional Deputy Commissioner by order dated 24.05.2016, made absolute the stay order dated 13.11.2014, staying the order

dated 10.10.2014 passed by the Circle Officer, Tinsukia in Partition Case No. 80/2013-2014.

13. It appears that the Court of Deputy Commissioner in exercise of power of review, reviewed and modified the order dated 30.07.2015.

14. It is settled law that unless the statute/rules so permit, the Review Application is not maintainable in case of judicial/ quasi judicial orders.

15. Reference is made to the case of the Apex Court in the case of ***Kalabharati Advertising versus Hemanta Vimalnath Harichani and Others*** reported in **(2010) 9 SCC 437**. Paragraph 12 and 13 and 14 of the said judgment is reproduced hereunder for ready reference;

“Legal Issues

Review in absence of statutory provisions

12. *It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641] .)*

13. *In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] , Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321] , Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186] , State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.*

14. *Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is*

not permissible.”

16. It further appears that there is no provision for review provided in the Assam Land and Revenue Regulation, 1886 and as such the Review Application filed by the respondent No. 5 is not maintainable. Further it appears that the Additional Deputy Commissioner, Tinsukia entertained the stay petition filed in the Review Petition in relation to the Revenue Appeal No. 9/2014 and therefore it amounts to review of the order dated 30.7.2015.

17. Pertinent that the decisions relied by Mr. K. Agarwala, learned Senior Counsel for the respondent No.5 does not apply in the context of the present case. This is not a case where a procedural review has been sought against the order dated 30.7.2015. Therefore, the Review Petition filed by respondent No.5 is not maintainable. Infact the Deputy Commissioner, by remanding the matter back to the Additional Deputy Commissioner, has reviewed the order dated 30.07.2015 and hence the order dated 26.8.2015 passed by the Deputy Commissioner and the consequent order dated 24.05.2016 passed by the Additional Deputy Commissioner is wholly without jurisdiction and ultravires.

18. As such the order dated 26.08.2015 passed by the Deputy Commissioner, Tinsukia in the stay application and consequent order dated 24.05.2016 passed by the Additional Deputy Commissioner is set aside and quashed.

19. Needless to clarify that in the event the respondent No.5 prefers an appeal under Rule 147 of the Assam land and Revenue Regulation, 1886, against the order dated 30.7.2015 passed by the Additional Deputy Commissioner in Revenue Appeal 9/2014, the time from filling the Review Application in Revenue Appeal No. 9/2014 till the disposal of the instant writ petition shall be excluded in computing the period of limitation.

Writ petition stands allowed as indicated above.

Disposed of.

JUDGE

Comparing Assistant