

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE SOUMEN SEN
&
THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE**

**SAT 90 OF 2020
Kasem Ali Mondal and others
-vs.-
*State of West Bengal***

For the Appellant : Mr. Budhadeb Ghosal
Mr. K.J. Tewari
Mr. Y. Mondal

Hearing Concluded on : 06.12.2021

Judgment on : 10.12.2021

Ajoy Kumar Mukherjee, J. : This second appeal arising out of an appellate decree affirming the Trial Court decree.

Shorn of details, the plaintiff alleged that the suit property previously belonged to one Zamindar named Annandya Prasanya Mukhopadhyaya (hereinafter referred to as 'Annandya'). This Zamindar was in possession of the suit property. He gave a "jamabandobosto" in favour of one Warish Mondal who is the grandfather of the plaintiff who paid taxes to the Zamindar. It is alleged that the State of West Bengal is

trying to disturb the peaceful possession of the suit property by the plaintiff. In view thereof the plaintiff filed a suit for declaration and permanent injunction.

The defendant has entered their appearance and filed a written statement. The defendant contested the suit.

Along with the copy of the previous judgments, it has been discovered that Alikadar Mondal has been examined as PW-1, Akram Mondal as PW-2, and certified copy of Kabuliyatnama dated 21.05.1907 as Exhibit-1, certified copy of E.A. Act as Exhibit-2, 11 rent receipts as Exhibit-3 and notice and A/D card as Exhibit-4. Following the same, BL and LRO have been examined as DW-1 and Settlement record marked as Exhibit-A.

The Trial Court framed six issues out of which one of the issues framed was determination of plaintiff's right, title and interest in the suit property. The learned Trial Court relying upon Exhibit-2 which is a settlement Parcha along with evidence of PW-1 has come to a finding that the said document namely Exhibit-2 would go to show that there was no land in the suit Khatian.

PW-1 in his cross-examination has stated that he would not file "B" form which is required to retain land if the person wants to retain land under West Bengal Estates Acquisition Act, hereinafter called W.B.E.A.

Act. On the aforesaid purpose the Trial Court arrived at a finding if the intermediary had retained the land he would have filed the “B” form inasmuch as there is no document relating to “jamabandobosto”. In fact, PW-2 in his cross-examination has stated that he was unaware that the suit property belonged to Zamindar or not.

Rent receipt produced before the Trial Court, however, would go to show that they paid taxes but it is well settled that payment of such taxes does not establish title over the property. Moreover, the appellant could not establish the chain of titles as the Appellant could not establish whether right, title and interest of the land was settled to Warish Mondal by way of “jamabondobosto”. It was for the plaintiff to complete the chain of title for claiming the decree. The suit was accordingly dismissed.

The order of Learned Appellate Court has meticulously analysed the evidence. The contention of the plaintiff before the Trial Court was that the plaintiff is the owner of the ‘Baor’ (uncared water body) situated in Dag No. 685 covering an area about 39.500 bigha more or less in which plaintiffs are Raiyat. The predecessor of plaintiffs acquired the said Baor by way of registered deed of Kabulati dated 20.05.1907 for which 15.50 paisa was fixed as annual fee. One Waris Mondal got Kabuliayatnama by executing a registered deed of Kabulati dated 21.05.1907 executed on 20.05.1907 in favour of Gobardangs’s Jamindar Ananda Prassana

Mukhopadhyay at annual consideration of Rs.15.50. The said Waris Mondal paid rent regularly and his name was finally published in the settlement record. After his death, the name of Manik Mondal was recorded as his only legal heir and he paid rent regularly. By passage of time, the legal heirs of Manik Mondal namely Khodabox Mondal, Azijur Rahaman Mondal, Majibur Rahaman Mondal inherited the suit property after the death of Manik Mondal and started paying rent to the Government. They had regularly paid tax to the government and was enjoying the suit property but in the month of May, 1971 the legal heirs of Manik Mondal heard from the local employee of State of West Bengal that the said Baor and Jalkar is vested by the government and would be distributed among different Raiyats. The strong case of the plaintiffs were that as the suit property is Jalkar Baor and not tank fishery as such government has no right to get it vested.

On the contrary the State of West Bengal denied and disputed the contention of the plaintiffs by stating that the suit Dag No.685 is not a Jalkar property but a *Beel* property and cultivation is made thereon. That property was vested to the government for not retaining by the intermediaries. After vesting, this property was distributed among 45 raiyat/farmers by government under W.B.E.A. Act. It is further case of the defendant that plaintiffs are not in possession of the suit property. As such, the instant suit should be dismissed with cost.

We have heard the Counsels appearing on behalf of the parties.

The Trial Court has recorded that PW-2 on cross-examination had submitted that, “He was unaware whether the suit property belong to the Zamindar or not.” The Learned Additional District Judge had discovered that the copy of Parcha prepared under W.B.E.A. Act i.e., Exhibit.-2, produced by PW-1, do not contain any enumeration as to the area of the land although it contained the names of the Appellants as raiyat under the Zamindar Annandya Prasanya Mukhopadhyaya. The issuing office is also not mentioned therein. Thus the Appellants were unsuccessful in proving their claim as a raiyat before the Learned Judges. The discrepancy in the Settlement Record was also noted by the Learned Judges. It was adequately sustained by the Learned Judge that no “jamabandobastanama” was filed with regard to the title of the appellants.

Suit dag number property is not a *Jalkar* property but “*Beel*” property and cultivation is made thereon as pleaded by Government of West Bengal. The existence of the right of cultivation is material for the purpose of a decision as to whether the “tank” or “*Beel*” in question is a “*tank fishery*”. Accordingly it can be said in view of this courts observation by a co-ordinate Bench in **Shanti Devi Vs Government of West Bengal** reported in **90 CWN 44** that the said “*Beel*” in question is

a tank fishery and the intermediaries were entitled to retain the “*Beel*” as a tank fishery.

In the present case the specific observation made by the Ld. Trial Court and First Appellate Court that there is nothing to show that the concerned intermediary has retained the “*Beel*” property by filing “B” form at the relevant point of time . PW-1 in his evidence also categorically stated that he will not file “B” form in the court to show that the then intermediary ever retained the said tank fishery under the provisions of section 6(2) of the West Bengal Estates Acquisition Act, 1953.

As the property in question is liable to be vested under Section 6(2) of the West Bengal Estates Acquisition Act, 1953 and in absence of any proof of retention by the intermediary we do not find any reason to interfere with the concurrent findings of fact and enunciation of law by both the Trial Court and First Appellate Court.

The issue of the presence of the rent receipts cannot be held to be a proof of ownership/title of the appellants. In a recent decision, the Supreme Court observed that a revenue record is not a document of title. A lessee would not be entitled to any claim on the land solely based on an entry in the revenue record, according to the Court. In **Prabhagiya Van Adhikari, Awadh Van Prabhag vs. Arun Kumar Bhardwaj (Dead) thr. L.Rs. and Ors. Reported in AIR 2021 SC 4739:**

MANU/SC/0791/2021, the Apex Court was considering an order of the High Court setting aside the order of the Deputy Director of Consolidation dated July 8, 2004, in which the revenue entry of Khasra Nos. 1576 and 1738 was ordered to be corrected in the name of the Department of Forest and the claim of rival claimants was set aside. The claimants had asserted rights over the forest land on the basis of entries in the revenue record. The Court determined that the High Court's decision was manifestly incorrect. The land had been vested in the Forest Department as a result of a statute's notification. The lessee was required to establish ownership to the forest land by a written agreement by competent body, but no such agreement had been presented. As a result, the lessee would not have any rights based only on an entry in the revenue record.

“26. This Court in a judgment reported as Prahlad Pradhan and Ors. v. Sonu Kumhar and Ors (2019) 10 SCC 259 negated argument of ownership based upon entries in the revenue records. It was held that the revenue record does not confer title to the property nor do they have any presumptive value on the title. The Court held as under:

.....The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question.....”

Further in **Nazir Mohamed v. J. Kamala**, reported in **2020 SCC OnLine SC 676**, the Apex Court has held that the scope of Section 100 CPC, in a second appeal, or for that matter, any appeal is not a matter of right. Thus the Court observed that where there was no such question of

law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, a second appeal cannot be entertained. The Court observed in paragraph 25 that;

“25. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the Court cannot expand the scope of the appeal. It was not open to the Respondent-Plaintiff to re-agitate facts or to call upon the High Court to reanalyze or re-appreciate evidence in a Second Appeal.”

As a result, this Court is convinced that there are no such questions to analyse and decide under Section 100 CPC. Both of the lower courts correctly decided to uphold the respondents' claim, and no further review is necessary in this second appeal. As a result, the second appeal must be denied.

In the result, the second appeal is dismissed confirming the decrees and judgments of both the Courts below, but in view of the facts and circumstances of the case we do not make any order as to costs in this appeal.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)