

20.09.2022
SL No.14
Court No.8
(gc)

SA 58 of 2016

**Atabul Sk. & Ors.
Vs.
Phani Bhusan Das & Ors.**

Mr. Arindam Chatterjee,
...for the Appellants.

This second appeal is directed against the appellate decree dated 25th March, 2010, passed by the learned Additional District Judge, Jangipur, Murshidabad reversing the judgment and decree dated 21st December, 2005 passed by the learned Civil Judge (Junior Division), 2nd Court, Jangipur, Murshidabad in a suit for declaration of title and permanent injunction.

Shorn of details, the original owner of the property in question was Gourabini Dasi, whose name was duly recorded and published in the C.S.R.O.R. The original description of the property was 'Aush' by nature. After the death of Gourabini Dasi, her two sons, namely, Nathu Charan Das and Chandicharan Das inherited the suit property in ejmali. Chandi Charan Das died in 1357 B.S. leaving behind three sons, namely, Japesh Das, Parikshit Das and Jiten Das who inherited the share of their father in the suit property and began to possess and enjoy the same along with their uncle, Nathu Charan Das. Subsequently, Nathu Charan Das died leaving behind the plaintiff Nos.1 to 4 and plaintiff Nos.7 to 10 as his successors. Before the completion of R.S. Operation, the

suit plot along with other plots were not acquired by the Government, but in order to make construction of a road, the soil of these plots was excavated and all these plots were turned into a water body (Doba) by reason of excavation. Thereafter, the owners of the plots started to possess the said Doba in accordance with their share. The plaintiffs claimed that the defendants have no right, title and interest in respect of the suit property. In the R.S.R.O.R in its 'Mantabya' (Remark) column, it has been written that the property was requisitioned by the Development Roads Department, West Bengal. According to the plaintiffs, they approached the P.W.D. Department to obtain necessary instruction with regard to such requisition but the said department represented that the possession of the plaintiffs in respect of such water body continued to remain as the water body was created due to excavation of soil for the purpose of construction of the public road. The plaintiffs claimed that they have been possessing the suit property for more than 30 years, which gives rise a good title in their favour. The L.R. Record has been published in their names without having any such imputation in it as the R.S. Record. The plaintiffs alleged that the defendants are trying to dispossess from the suit property and they are trying to use the water body for their business.

In view of the aforesaid, the plaintiffs filed a suit for declaration of their right, title and interest over and in respect of the suit property along with the prayer for

permanent injunction. The defendants contested the suit. The defendants challenged the maintainability of the suit on various grounds. The defendants further alleged that the description of the suit property was vague and all the owners of the said Doba are required to be impleaded as party to the suit. They further contended that they got the suit property from the Government and they have the right to possess the same as lease-holder. The Trial Court dismissed the suit on the ground, on the basis of the admission of the plaintiffs, that after amalgamation, the suit property itself is a non-existent entity and it may have amalgamated with non-suit property even if the plaintiffs may be able to establish some kind of right in respect of their share but the Court shall not pass a decree for declaration of an abstract right over a vague subject matter. The plaintiffs being aggrieved by the said decree preferred an appeal. In the first appeal, the suit was decreed in favour of the plaintiffs.

The Appellate Court reversed the decree of the Trial Court by taking into consideration that in the C.S.R.O.R. (Exhibit No.1), the suit property was recorded in the name of the Gourabini Dasi, measuring 41 sataks and the type of land was "Aush". From the Information Slip of R.S.R.O.R (Exhibit No.2), it appears that the suit property stands in the name of Nathu Charan Das and others, with a Note that "requisition by the Development Roads Department". The L.R.R.O.R (Exhibit No.3) shows that the suit property has been recorded in the name of some

of the plaintiffs and it has been typed as 'Doba' (water body). In the L.R.R.O.R, the plot number has been changed to 18 and the area of the land remains the same, that is, 41 sataks. The Appellate Court relied upon Exhibit Nos.4 to 4/1 which shows that the Government received rent from the plaintiffs in respect of the suit property. The admitted position that transpired from evidence was that the heirs of Gourabini Dasi succeeded the suit property by inheritance and there is also admission that at the time of construction of the road, the character of the suit property was changed into 'Doba' by reason of excavation of soil from the suit property. The successors of Gourabini Dasi have been claiming title over 41 sataks of land in plot No.18, which they inherited from their predecessors. Therefore, the claim and the record of rights show that these plaintiffs have kept themselves confined into the suit plot and they have not prayed for declaration of their title over the other adjoining plots, which have been turned into a Doba by way of excavation of soil from it. The L.R.R.O.R (Exhibit No.3) conclusively proves that at the time of L.R. Operation, the existence of the suit property remained as it is only its type has been converted into Doba. L.R.R.O.R would also show that the Government has not made any claim in the suit property by way of requisition. The Note in the 'Mantabya' column of R.S.R.O.R. has been erased in the L.R.R.O.R. The Government of West Bengal did not raise any claim by the plaintiffs over the suit property. The Government has

never stated that 41 sataks only belonged to the plaintiffs or that the creation of the water body was by reason of excavation of soil in the suit plot over which the plaintiffs are making a claim.

We agree with the findings of the First Appellate Court as it seems that the Trial Court has not considered the said Exhibits in its proper perspective and the attention that should have been bestowed on the said documents and exhibits was not given.

On the basis of the aforesaid findings, it cannot be said that the suit property was vague or not identified. The First Appellate Court has also considered the claim of the defendants in respect of Doba or a portion thereof in which the defendants have made a claim that the Government permitted to rearing fish on the basis of the lease. The defendants could not adduce any evidence to establish their rights in respect of such water body. The Government has also not supported case of the defendants/appellants. The clear findings of fact that is quite discernible on the basis of the appreciation of the evidence by the First Appellate Court, in our view, it is not required to call for any interference at the appellate stage. The order of the First Appellate Court is based on re-appreciation of oral and documentary evidence.

On such consideration, we do not find any reason to admit the second appeal. There is no substantial question of law involved in the second appeal.

Accordingly, the second appeal being SA 58 of 2016 stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)