

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

BEFORE:

The Hon'ble Justice Soumen Sen

and

The Hon'ble Justice Ajoy Kumar Mukherjee

SA 114 OF 2021

Smt. Lalsa Thakur

Vs.

Sri Pradip Singh & Ors.

For the Appellant

: Mr. Bhaskar Ghosh, Sr. Adv.
Mrs. Usha Maiti, Adv.
Mr. Sakya Maity, Adv.

Order dated : 21.03.2022

Soumen Sen, J.(Oral): This second appeal has come up for admission. Mr. Bhaskar Ghosh, learned senior counsel appearing for the appellant, submits that the appeal is required to be admitted on the ground that both the courts below on misconception and misreading of materials on record along with Section 3A of the West Bengal Land Reforms Act, 1955 arrived at a wrong finding.

The second appeal is arising out of the appellate judgement and decree dated 27th May, 2019 passed by learned Additional District Judge, 5th Court, Paschim Medinipur, in Title Appeal No. 130 of 2010 affirming the judgement and decree dated 20th September, 2010 passed by learned Civil Judge (Junior Division), 1st Court Paschim Medinipur, in Title Suit No. 136 of 1995.

The plaintiff has filed a suit for declaration and injunction. The plaintiff alleged that the suit property consists of two plots, previously belonged to one Balai Singh. At the relevant point of time, the suit land was barren land. The plaintiff's father-in-law Jang Bahadur Thakur at the relevant time was dealing with dairy business in Midnapore town and in search of a suitable place in Midnapore town for doing the said business in 1965 he approached Balai Singh for getting the suit land on lease. At the instruction of Balai Singh, the plaintiff's father-in-law levelled the suit land and removed the bushes.

In view of the fact that the plaintiff with the intervention of her father-in-law and through her husband approached to the owner of the suit land Balai Singh for yearly lease of the suit land. In 1965 Balai agreed to give the suit land on lease @ Rs.5/- per annum in favour of the plaintiff. In the year 1981 the plaintiff constructed a 'pucca' two rooms along with service privy and used to reside with her family there.

In view of the amendment of West Bengal Land Reforms Act, 1981, the right, title and interest in the suit property of the land owner Balai Singh was vested to the State and the plaintiff being the yearly tenant of the suit land, as per the provision of said Act, became the direct tenant under the State of West Bengal. Though the plaintiff was residing at the suit land having right, title and interest by virtue of amendment of West Bengal Land Reforms Act, 1981 in the last L.R. settlement, the suit land was erroneously recorded in the name of Balai Singh as owner and the name of the plaintiff was recorded as permissive possessor under Balai Singh.

In view of the fact that the plaintiff became raiyat under the WBLR Act as per provision of the Amendment Act, the plaintiff made a claim for correction of the L.R record by including her name as raiyat in respect of the suit land. Although record of rights previously mentioned the plaintiff as permissive possessor and she was enjoying the suit property without any resistance or interpretation.

Balai Singh died leaving behind his sons, the defendants. The plaintiff has been possessing the suit property for more than 30 years having knowledge of the actual owner Balai Singh. The plaintiff accordingly claimed ownership by way of adverse possession. It is also alleged that on 18th June 1995 on the basis of erroneous recording in the ROR the defendants wanted to disturb the possession of the plaintiff from the suit land, which resulted in the present suit.

The defendants entered in the suit and filed written statement. In the written statement the defendants claimed that Balai Singh was tenant under Amarendralal Khan, zamindar of Narajal, upon payment of tax of Rs.5/- yearly in respect of plot no. 408/690 and plot no. 409/92. In the R.S.R.O.R the suit land was recorded in the name of Balai Singh, predecessor of the defendants. While Balai Singh has been enjoying the property, he died leaving behind his four sons, three daughters and wife as his legal heirs. Subsequently, his wife died. At the L.R settlement the suit property was recorded in the name of Balai Singh in L.R parcha. Balai Singh never gave the suit land on lease either to the plaintiff or her father-in-law. The plaintiff or her father-in-law never possessed the suit land on the basis of any such lease and they have no right to acquire in

respect of the suit land. Balai Singh was in possession of three plots of land, where he long before constructed houses thereon and inducted several tenants. Sons of Balai Singh inducted the plaintiff's father-in-law, Jang Bahadur Thakur as tenant at a rent of Rs.35/- per month in a room of plot no. 409 constructed by the father of the defendants made with bamboo chite-berah.

The defendant no. 2 used to issue receipt on payment of rent to Jang Bahadur Thakur and Jang Bahadur Thakur brought the plaintiff in the suit plot. The plaintiff on the vacant land by the side of the said house forcibly tried to construct house which the defendants objected and thereafter since October 1995 they did not pay any rent in respect of the suit premises.

On the basis of oral and documentary evidence, the trial court framed 11 issues. Issue no. 8 relates to applicability of Section 3A of the West Bengal Land Reforms Act, which has also now become relevant in view of the submission made by the appellant. The said issue was addressed by the trial court being *Issue no. 8* in the judgment along with other issues. In answering the said issue against the plaintiff, the trial court has recorded that there was no evidence before the court that after amendment act of WBLR Act the total land held by Balai or his predecessor, is in excess of the ceiling area under Section 14M and after retaining of any such non-agricultural land by Balai or his predecessor, any portion of land of Balai vested to the State.

On the trial Exhibit A to Exhibit F conclusively show that the suit land was all through record in the name of Balailal. It is alleged that the

claim of the defendants based on such exhibits. Moreover, no document of vesting of any land or the suit land of Balai was produced before the trial court. Rather it appears from the evidence and more particularly in L.R Porcha, (Exhibit-F) that the suit land was recorded in the name of Balailal. The question of vesting the land under Section 3A of the West Bengal Land Reforms Act was never established before the trial court.

The first appellate court while agreeing with the finding of the trial court has taken into consideration the deposition of D.W 1. D.W 1 during cross-examination stated that the suit land was forcibly occupied by the plaintiff, in which the plaintiff had constructed the cowshed with pucca pillar.

The evidence of P.W 1 was also crucial to the issue raised by Mr. Ghosh. P.W 1 during his cross-examination stated that he could not recollect the plot number, which was alleged to have been given on lease by Balai in favour of his father. He could not recollect the plot, wherefrom he alleged to have started business. He also could not produce any settlement in the fact. He admitted during cross-examination that the plaintiff was residing in the suit property as permissive occupier, which corroborates L.R.R.O.R. He also could not establish his right, title and interest in the suit land. Plaintiff contented that Balai had given their suit land on lease in 1965 @ Rs.5/- per annum but he failed to show that any such lease was registered in compliance with Section 107 of Transfer of Property Act.

Mr. Ghosh in all fairness submits that he is not arguing on the acquisition of title by way of adverse possession.

In order to attract Section 3A of W.B.L.R Act it has to first establish that the land is a non-agricultural land. Every barren land cannot be considered as non-agricultural land. The plaintiff has to prove at the trial that the land in question was a non-agricultural land and the right of Balai was vested in the State in view of the Provision of W.B.L.R Act, 1955. The plaintiff has failed to establish any relationship as landlord and tenant between the plaintiff and the defendants or there has been any payment of rent by the plaintiff to the defendants for occupation of the property in question. It is also important to note that the plaintiff has failed to produce any single document to show that any rent receipt was ever issued by Balai in favour of the plaintiff in respect of the suit property. The contention of the plaintiff is that at the time of giving amount Balai gave oral settlement with assurance to execute document to that effect after one year.

The purported admission by the defendants that the father-in-law of the plaintiff was occupier as monthly tenant. This type of stray sentence by the defendants cannot be of much relevance, as the plaintiff has to prove his case by producing cogent and acceptable evidence. However, the said evidence does not say that the nature of tenancy of father-in-law of the plaintiff was of non-agricultural tenant and the father-in-law as under tenant of Balai had obligation to make payment of rent to the plaintiff. There is no evidence to show that Balai's interest in respect of the suit plot was ever vested in the State.

These are all factual enquiries made by the trial court as well as the first appellate court on the basis of evidence on record. However, at

this stage we record that Mr. Ghosh is relying upon an application to show to produce certain rent receipts showing that rent was paid to Balai. The suit was filed in the year 1995 and now it is in the year 2022. The said application, relying upon by Mr. Ghosh, is now sought to be filed as additional evidence.

Order 41 Rule 27 relates to certain criteria for production of additional evidence before the appellate court. It requires that the parties seeking to produce additional evidence must establish notwithstanding the exercise of due diligence such evidence could not be produced.

These 25 years are too long a time for the appellant to resurrect. In fact, specific question was put to different witnesses of the plaintiff at the trial with regard to the existence of rent and all the witnesses of the plaintiff at that time admitted that they were not in possession of any rent receipt. Even P.W 1 during cross-examination has clearly stated that he does not know the basis of claim made by the plaintiff. It was open to the appellant even at the first appellate stage to cure the defects or approach appropriate authority for correction of record of rights.

Admission of second appeal has to be decided on the basis of available record to see whether there is any substantial question of law involved in the appeal. In absence of any such question of law we are not inclined to admit this second appeal.

The findings arrived at by the both the courts below cannot be said to be perverse.

On such consideration, we do not find any merit in the second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There shall be no order as to costs.

I agree

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)