

23.02.2023  
SL No.48  
Court No.8  
(gc)

**SAT 502 of 2009**

**Kasem @ Abul Kasem Sk & Ors.**

**Vs.**

**Idrish Sk. & Ors.**

None appears on behalf of the appellants. The appellants have due notice with regard to the listing of this matter. This matter was in the list for quite some time. Under such circumstances, we decide to consider the judgments along with the grounds of appeal in order to find out whether the second appeal involves any substantial question of law.

The communicated dated 9<sup>th</sup> February, 2023 from the learned Civil Judge (Sr. Divn.) 1<sup>st</sup> Court, Berhampore, Murshidabad forwarding a fresh certified copy of the decree in T.A. No.56/98 is taken on record.

The appellate judgment and decree dated 30<sup>th</sup> June, 2009 passed by the Civil Judge (Senior Division) affirming the judgment and order dated 4<sup>th</sup> March, 1998 passed by the Civil Judge (Junior Division) in connection with two suits for declaration of title and for permanent injunction is a subject matter of challenge in this second appeal.

The Trial Court heard T.S. 75 of 1974 and T.S. 76 of 1974 analogously. The said two suits are for declaration of title and for permanent injunction.

Briefly stated, the plaintiff in T.S. 75/74 filed a suit in relation to the land situated under Mouza – Juginda, Plot Nos.7788, 7789, area of .76 decimals described in the schedule of the plaint (hereinafter referred to as the suit property) of which Nipendra Krishna Chowdhury was the original owner/landlord. Kalu Sk., Aynuddin Sk. and Mangal Sk. were tenants under Nipendra Krishna and had been paying rent. The C.S.R.O.R. correctly recorded the name of the said three persons as tenants. Mangal Sk. subsequently became the sole owner of the suit property after demise of the said three persons leaving behind his only son, Karim Box as absolute owner. After the death of Karim Box, the plaintiff has become exclusive owner of the suit property. However, taking advantage of the erroneous R.S.R.O.R, the defendants threatened the plaintiffs to dispossess them from the suit property. Under such circumstances, T.S. 75/74 was filed by the plaintiffs.

The plaintiffs of T.S. 75/74 are defendants of T.S. 76/74 and their case are made out in the plaint was their defence in their other suit. The plaintiffs of T.S. 76/76, however, contended that one Jaigan Bewa, mother of the plaintiff Nos.1 and 2 took settlement of the property from the landlord Baidyanath Adhikary on the basis of a Dakhila. Jaigan Bewa had been in possession of the suit property since the date of settlement and had been paying the rent to the

landlord. R.S. record made correctly in the name of Jaigan Nessa who died in the month of Kartick, 1375 leaving behind her two sons. i.e., the plaintiff Nos.1 & 2 and one daughter Gerimon Bibi who became owners of the suit property by way of inheritance. Subsequently, Gerimon transferred her share in favour of the plaintiff Nos.1 and 2 by virtue of a registered deed of sale. Plaintiff Nos.1 and 2 thereby became the absolute owner of the suit property and was cultivating the said land. The defendants tried to interfere with such peaceful possession of the plaintiffs over the suit property. Hence, they have filed the suit being T.S. No.76/74. On the basis of the pleadings the learned Trial Court framed several issues. However, the most important issue appears to be right, title and interest of the respective parties in relation to the suit property. Both the Courts have on the basis of the pleadings and evidence held that the plaintiffs in T.S. No.75/74 was able to establish their right, title and interest in the suit property and the suit was decreed on contest against the defendant Nos.1 to 5 and ex parte against the defendant Nos.6 and 7. The decree declared that the plaintiffs have right, title and interest and possession over the suit property described in Schedule 'Ka' to the plaint. It is an admitted position that the plaintiffs in both the suits were claiming to be tenants of the suit property under their ex-landlords, namely, Nipendra

Krishna and his family members. From the judgments of both the Courts it appears that the plaintiffs have relied upon C.S.R.O.R, rent receipts issued by ex-landlord, that is, Bagchi Estates and rent receipts issued by the State of West Bengal for the period of 1362 B.S.

These documents were marked as Exhibits-D,C and A respectively. The said documents were relied upon by the plaintiffs in order to prove the tenancy of Kalu Sk. and others under the ex-landlords, namely, Nipendra. According to the defendants, Jaigan Bewa took settlement from Baidyanath by virtue of rent receipts, that is, Jaingan is corfa that is under raiyat. Corfa can be taken settlement only from raiyat who was a tenant under the ex-landlords but above the rank of under raiyat. It was under such circumstances, the defendants were required to show that Baidyanath took the settlement for suit property from the ex-landlords. The defendants could not produce any evidence, oral or documentary to prove the tenancy right of Baidyanath under ex-landlords. There is no reference in the plaint about the settlement of the suit property by Baidyanath. Only R.S. record was submitted by the defendants in T.S. No.75/74 to show that Baidyanath was tenant under the ex-landlords. However, the correctness of R.S.R.O.R of the suit property was challenged by the plaintiffs relying upon the decision of our Court in

***Kandan Mandi @ Santal & Ors. v. Santi Prosad & Ors.***, reported in **88 CWN 789** in which it was held that the record of rights itself is not a document of title but it creates of presumption in respect of possession which however, is rebuttable. In order to prove the settlement of Baidyanath in his favour from the ex-landlords, the following facts are required to be taken into consideration:-

- i) The property was under the Khas possession of Nipendra but no oral or documentary evidence was produced to prove the fact that the suit property was in the Khas possession of Nipendra and others.
- ii) There was no evidence and averment in the plaint of the subsequent suit being T.S. No.76/74 that Baidyanath was recognized as tenant or raiyat under ex-lands.
- iii) No rent receipt or document of settlement was produced and no oral evidence was adduced before the Trial Court for establishing the basis of inclusion of the name of Baidyanath in R.S.R.O.R. as raiyat or tenant under the ex-landlords.

The correctness of C.S.R.O.R. in respect of the suit property has not been challenged by the defendants in their defence. C.S.R.O.R. of the suit property has been marked as Ext-D which goes to show that the

status of Kalu Sk. and others as “raiyat dakhila”. The defendants contended that Kalu Sk. and others were not raiyat at a fixed rate as contemplated under Section 18 of the Bengal Tenancy Act. According to the defendants, the tenancy to the plaintiffs is not permanent as there is no fixed rent shown in C.S.R.O.R and in respect of C.S.R.O.R no other document was filed by the defendants to show that the plaintiffs are occupying the suit property after taking settlement from the ex-landlords.

Section 20 of Bengal Tenancy Act lays down that every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

It appears from the C.S. record that Kalu Sk and others held as Raiyati land under Utbandy system.

From the Dhakhilas issued by ex-landlords as well as rent receipts issued by State of West Bengal i.e. Ext. A, it appears that the rent has been fixed at a Jama of Rs.1-8-0 and plaintiffs have acquired status of settled raiyat.

In view thereof, neither Section 8 nor Section 29 of the Bengal Tenancy Act would stand in the way of the plaintiffs’ right in the property. The rent receipts issued

by the State of West Bengal for the period 1362 B.S. would show that Kalu Sk. and others were the original owners/tenants and their tenancy continued before R.S. record. It further appears that rent was Rs.1-8-0 in respect of the property appertaining to C.S. Khatian No.240 of Mouza- Juginda for the property measuring 76 decimals and if the names of Kalu Sk. and others were not shown as tenants in the tenancy return submitted by the ex-intermediaries under Section 9 read with Section 10 of the West Bengal Estates Acquisition Act, rent receipts could not have been issued by the State of West Bengal. In view thereof, the Trial Court held that the R.S.R.O.R. has no basis and the said record is erroneous. If the R.S. record is found to be erroneous then the rent receipts submitted by the defendants which were subsequent to R.S. record are of no relevant. The learned Trial Judge has relied upon the decision of our Court in ***Mohur alias Mohan Lal Dey & Ors. v Sudhir Chandra Dey & Ors.***, reported in **1984 (1) CLJ 408** in which at page 410 it has been held that the entries in the record of right may be presumed to be correct unless contrary is proved but when the matter is investigated by the Civil Court and the parties adduce evidence on the point in controversy it loses weight when the evidence discloses no foundation for it. C.S.R.O.R. coupled with Dakhila issued by ex-landlords and rent receipts issued by the State of West Bengal

established that Kalu Sk., Aynuddin Sk. and Mangal Sk. were the original owners of the suit property. Since Baidyanath has no transferable interest in the property the plaintiffs in the other suit cannot claim any right through Baidyanath.

The First Appellate Court in concurring with the findings of the learned Trial Court had taken into consideration the evidence of D.W.-1 and D.W.-2 of T.S. No.75/74. The following observations of the First Appellate Court are relevant:-

*“At the time of trial pltffs. of T.S. No. 76/74 has stated as D.W. 1 in T.S. No. 75/74 that he has no personal knowledge about the recording, ownership and devolution of interest. As per D.W. 2 of T.S. No. 75/74 Baidyanath Adhikari was the Jamindar and not tenant and it has also been stated that the witness has document to establish the fact that Baidyanath was Jamindar. If Baidyanath was Jamindar, then his interest in the land should have vested in the State free from all incumbrances as per section 4(1) of the W.B.E.A. Act and if the land has not been retained by him as per section 6 of the W.B.E.A. Act then Baidyanath has no interest whatsoever over the suit property. Nothing has been failed to establish Baidyanath’s right, title and interest over the suit property. So, in absence of Baidyanath’s right, title and interest over the suit property, Jaigan Bewa can’t claim any right, title and interest over the suit property when indeed she is coming from Baidyanath.”*

The learned First Appellate Court in relying upon the decision of our Court in ***Mahabir Pandey & Ors, v. Sashi Bhusan Dubey & Ors.***, reported in **AIR 1981 Cal 74** observed that in case of conflict between the C.S. Khatian and R.S. Khatian, latter entry should be presumed to be correct and shall prevail [See also, ***Jatindra Nath Malik, v. Sushilendra Nath Palit***, reported in **69 CWN 210**]. Moreover, in the instant case, C.S.R.O.R. has not been challenged. It was also evidence from the cross-examination of D.W-1 in T.S. No.75/74 that the plaintiffs of T.S.No.75/74 has no personal knowledge about the C.S.R.O.R.

In concurring with the finding with regard to the right of Kalu Sk. and others, the transfer of the property, the First Appellate Court held:-

*“Now, the title of Kalyu sk, and others is needed to be considered. Idris Sk. and others i.e. the pltffs. of T.S. No. 75/74 have based their title upon the C.S.R.O.R. and have claimed that Kalu Sk. and others took settlement from the ex-landlord. On perusal of the C.S.R.O.R., it appears to me that the nature of settlement was “utbadi”. Therefore, Kalu Sk. and others were not settled raiyats but only having occupancy right. Though they had occupancy right, but as per section 25 of the B.T. Act, such occupancy raiyats can’t ejected by whims and caprice. The means prescribed to show the fact that Kalu Sk. and others were evicted from the suit plot nor it has been pleaded. Moreover, as per section 20 of the B.T. Act every person who for a period of 12 years wherefrom wholly or partly before or after*

*commencement of this Act as continuously held as raiyat land situated in any village, whether under a lease or otherwise shall be deemed to have become expiration of that period as settle raiyat.*

*So, by operation of the two sections it can be safely concluded that Kalu Sk and others were the settled raiyats and the legal possession as mentioned in 88 C.W.N. 789 is also important wherefrom it can be concluded that once a tenant is always a tenant unless evicted or ejected in due course of law. So, it can be concluded that Kalu Sk. and others were settled raiyats but the question that arises further whether the settlement was valid or not and whether the person giving settlement had that right or not. On perusal of the rent receipts submitted by Idris Sk. and others it appears to me that the rent receipts were issued by common Manager of Bagchi Estate duly authorised by the Ld. District Judge. Such fact is support by the R.S. parcha of Khatian No. 240. From column No. 1 of that khatian we can find that Shri Ranendra Narayan Bagchi was the common Manager of Bagchi Estate. No contradicting evidence is forthcoming to rebut this factual aspect.*

*So, it be concluded that Ranendra Narayan Bagchi was the ex-landlord and this being the fact it can be said that he has authority to collect rent from tenants under their jurisdiction.”*

The concurrent findings of facts are based on cogent evidence and on proper appreciation of law and fact.

Under such circumstances, we do not find any reason to admit the second appeal,

The second appeal, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**