

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

SA 381 of 2010

Anukul Mondal

Vs

**Purna Chandra Mondal, since deceased,
rep. by Smt. Monirani Mondal & Ors.**

For the Appellant : Mr. Alok Roy Chowdhury
Ms. Anindita Roy Chowdhury

For the Respondents : Mr. Anjan Roy
Mr. Subhajit Chowdhury
Mr. Souvanik Mahapatra

Heard on : 13.02.2024

Judgment on : 20.02.2024

Ajoy Kumar Mukherjee, J.

1. This Second Appeal has been preferred by the appellant against the judgment and order dated 10th September, 2010 passed by learned Additional District Judge, Bongaon in T.A. No. 1 of 2009. By the impugned judgment learned court below has set aside the judgment and decree dated 26.11.2008 and 05.12.2008 respectively, passed in T.S. No. 18 of 2001 by the learned Civil Judge, (Junior Division) Bongaon.

2. Plaintiff's case as set out in the plaint, in brief, is that the plaintiff/appellant herein Anukul Mondal is living in the suit property after raising construction thereon since 1966. He filed one beneficiary

case no. 137 of 1986 in respect of the suit property for allotting the said property in his favour under the West Bengal Acquisition of Homestead Land for Agricultural Labourers Artisans and Fishermen Act, 1975 (Act of 1975). The Junior Land Reforms Officer, Government of West Bengal issued PATTA (conferment of title) in his favour in respect of the suit property.

3. Being aggrieved by that order the respondent herein/defendants preferred appeal being Appeal case no. 23 of 1998 before Sub-Divisional Land and Land Reforms Officer (hereinafter called as 'SDL&LRO'), Bongaon and the said authority after hearing the Appeal, by an order dated 22.12.2000 was pleased to set aside the order which was passed in favour of the plaintiff/appellant in the aforesaid beneficiary case no. 137 of 1986. Plaintiff further alleged in the plaint that taking advantage of the said order dated 22.12.2000, the defendant/respondents started threatening the plaintiff to dispossess on and from 03.02.2001 and for which the plaintiff filed the aforesaid suit being T.S. No. 18 of 2001.

4. The respondents/defendants appeared in the said suit and filed written statement along with a counter claim. The defendant denied all material averments made in the plaint and contended that in view of final result passed in aforesaid appeal by the SDL & LRO, Bongaon on 22.12.2000, plaintiff Anukul Mondal is not entitled to come under the purview of the West Bengal Homestead Land for Agricultural Labourers, Artisan and Fishermen Act, 1975, nor he can claim the ownership of the suit land as homestead beneficiary. The defendant accordingly prayed

for dismissal of the suit but in his pleading he has also set up a counter claim for a decree of plaintiff's eviction from the suit property on the ground that plaintiff's possession in the suit property on the basis of licence, had already been revoked.

5. Defendants specific case in his pleading is that there was total 11 decimal of land in the suit plot, which originally belonged to one Sibarani Mondal and before her demise she sold .03 decimal of land from the suit plot to the elder brother of plaintiff i.e. one Arabinda Mondal and she also sold .06 decimal to one Pramod Mondal and had gifted rest .02 decimal of land to the defendant no.1 of the suit in 1986. Said two decimal of land was lying vacant and the defendant no. 1 was then working in West Bengal police. He took retirement from the service in 1988. In that year the plaintiff approached before the defendant no. 1 and expressed his intention that he may be permitted to construct a temporary room upon the vacant land i.e. over the suit property, which could be used for conducting social programmes and also assured the defendant no. 1, whenever he will be told he will leave the place and plaintiff being the nephew of the defendant no. 1, out of love and affection, defendant no. 1 gave the required permission in 1988. But the plaintiff managed to get order under the aforesaid beneficiary case and in the year 1997 defendant no. 1 came to know that the plaintiff has constructed the room over the suit property in 1996. Accordingly, defendant filed aforesaid Appeal being Appeal case no. 23 of 1998 and

he succeeded in the appeal and thereby plaintiff's PATTA granted under the Act of 1975 was revoked.

6. Thereafter, on 01.01.2001 defendant has revoked the permission to use the suit property by the plaintiff and requested him to vacate but the defendant did not pay any heed to such request and for which not only the plaintiff's case is liable to be dismissed but as per counter claim of the defendant, the plaintiff is liable to be evicted also. The Trial Court after conclusion of trial came to a finding that plaintiff admitted that his claim over the suit land is by virtue of the aforesaid PATTA and as such he cannot claim title in the suit property by way of adverse possession alternatively. Trial court also noted that plaintiff admitted that the defendant has served notice upon him to quit the land. He also came to a finding that the plaintiff was in permissive possession in respect of the suit property under defendant no. 1 and the defendant no. 1 has transferred his ownership in favour of defendant no. 2.

7. However, relying upon the evidence of DW 1, who admitted that he never served any notice to quit upon the plaintiff, the Trial Court held though in the written statement it has been averred that oral notice was given to the plaintiff but since no notice of eviction has been properly served upon the plaintiff by defendant, so defendant is not entitled to get any relief or decree as prayed for in the counter claim. At the same time, Trial Court also held that the plaintiff could not prove that he has derived his title in the suit property by way of adverse possession and as such he is also not entitled to get the decree of declaration regarding his

title in the suit property. However, since admittedly the plaintiff is in physical possession over the suit property, so the court below concluded that the defendants have no right to disturb plaintiff's possession in the suit property and accordingly an order of permanent injunction was passed restraining the defendant no.2/purchaser from committing any trespass into the physical possession of the plaintiff over the suit property as well as from disturbing plaintiff's physical possession in the suit property by any illegal manner.

8. Being aggrieved by the said judgment and decree passed by the Trial court on 26th November, 2008 the respondent herein/defendants preferred first appeal but the plaintiff/appellant herein neither filed any cross appeal nor any cross objection challenging the findings of the Trial court.

9. Learned First Appellate court after hearing the parties came to a finding that result of the case under the Act of 1975 ultimately went against Anukul but he has not challenged the same in the Appeal nor he has disputed the findings of the Trial Court that plaintiff has not acquired title in the Suit property by way of adverse possession. He has also not challenged the finding of the Trial court that plaintiff is a mere licensee under the defendants/rightful owner of the suit property. Court below further held that the defendant in para 10 to 13 had made the prayer for decree for plaintiff's eviction from the suit property by way of counter claim and he turned down the Respondents contention that the counter claim is not maintainable since it was not filed by making

separate application as for placing counter claim no separate application is required to be filed. He then came to a conclusion that as both the parties counsel concurred before Appellate Court that in case of eviction of licensee, there is no need to serve written notice upon the licensee and defendant also in para 10 of written statement averred that the licensee was requested to vacate the suit premises, accordingly, the court below turned down the Trial Courts finding that the defendant is not entitled to get decree of eviction as prayed in the counter claim for want of formal eviction notice and thereby Court below allowed the appeal on contest after setting aside the judgment and decree passed by the Trial Court in connection with permanent injunction which was granted in favour of plaintiff, and he had passed a decree of eviction of the appellant/plaintiff from the suit property with direction to deliver vacant possession of the suit property within 60 days on the basis of defendants' counter claim.

10. Being aggrieved by that judgment and decree, the plaintiff appellant have preferred this Second Appeal, wherein he contended that the appellant got the conferment of title (PATTA) under section 4 of the Act of 1975 by an order issued by Block Land & Land Reforms Officer (BL&LRO). He further contended, when the appeal preferred against such conferment of title, the SDL&LRO ought not to have entertained or heard or disposed of said Appeal as per Rule framed under the said Act vide notification no. 229 RH/CAL dated 16th July, 1985, whereby all such officers including BL&LRO and the members of the subordinate land revenue service grade-I, have been appointed to discharge within

their respective jurisdiction any of the functions of a Collector under the said Act. Therefore, by virtue of aforesaid Rule the jurisdiction and function of SDL&LRO and BL&LRO have become same and at per and as such SDL&LRO had no jurisdiction to entertain the aforesaid appeal being appeal case no. 23 of 1998 filed by the respondents herein/defendants.

11. In this context Appellant further referred a judgment passed by the Division Bench of this court in ***Sri Narendra Nath Roy Vs. State of West Bengal and others***, reported in **2004 (1) CLJ (Cal) 81** wherein it has been held that appeal against order passed by Revenue Officer performing the functions of the collector, lies before the West Bengal Land Reforms and Tenancy Tribunal and should be heard by that Tribunal. Accordingly he argued that the SDL&LRO had committed mistake and had got no jurisdiction to annul the conferment of title granted to the plaintiff by way of PATTA in the suit property.

12. Mr. Roy learned counsel appearing on behalf of the Respondent submits that both the parties before the court below has concurred with the proposition of law that there is no need to serve notice upon the licensee and it was also averred in the written statement by the defendant that plaintiff was verbally asked to quit and vacate and as such the First Appellate Court has rightly come to a conclusion that the judgment and decree passed by the Trial court suffers from material infirmities and was required to be interfered and has rightly passed the

decree of eviction against the appellant herein. Accordingly, he has prayed for dismissal of the present second appeal.

13. This court while admitting this appeal by the order dated May, 2, 2012, has been pleased to observe that this second appeal will be heard on the following substantial question of law:

“Whether the learned judge in the lower appellate court substantially erred in law in reversing the decree of the trial court proceeding on the findings in the decision passed in an appeal filed under West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975, when the appeal against the order granting PATTA was not maintainable before the appellate tribunal as the Block Land and Land Reforms Officer was, also, discharging the function of the Collector within his jurisdiction?”

DECISIONS WITH REASONS

14. At the cost of repetition it is required to be mentioned that though the Trial court has granted decree of permanent injunction in favour of plaintiff on the basis of his possession in the suit property but he made certain significant observations in his judgment dated 26.11.2008 which was never challenged by the appellant herein by preferring any cross appeal or cross objection. Such observations include

- (a) Plaintiff’s claim of acquisition of title in the suit property by way of adverse possession for possessing the same for more than 30 years is not at all sustainable in the eye of law.

- (b)** The defendant no. 1 had actual possession over the suit property by way of gift from his mother and the defendant no.1 had the legal possession (de jure possession) over the suit property, whereas the plaintiff has/had physical possession (defacto possession) under the legal possession of the defendants
- (c)** Plaintiff is in permissive possession in respect of the defendant no. 1 and that defendant no. 1 had successfully transferred his ownership in favour of defendant no. 2.

15. Both the parties have also expressed their concurred view before court below that in case of eviction of a licensee or permissive occupier, no notice is required to be served formally. When the Trial court specifically held that plaintiff is in permissive possession in the defendant's land, he ought not to have held that defendant is not entitled to get decree of eviction against the plaintiff since no notice of eviction has been properly served upon the plaintiff by the defendant. Licence does not create interest in the property, it only permits one to occupy property of some other, which without permission or without licence would be unlawful. Since it is only a personal privilege, Trial court was erred in holding that for revocation of licence by demand for possession, is always pre-condition for institution of eviction suit against licensee. It depends upon facts of each case.

16. Now in terms of substantial question of law as framed, the only argument made by the appellant herein is that by the notification no.

229 RH/CAL dated 16th July, 1985 read with the judgment passed by the Division Bench of this court in **Sri Narendra Nath Roy case (Supra)**, it is settled that all Districts Land and Land Reforms Officers, Settlements Officers, Deputy District and District Land Reforms Officer, Sub-Divisional Land and Land Reforms Officers and Block Land and Land Reforms Officers and the member of the subordinate Land Revenue Service Grade-I, have been appointed to discharge within their respective jurisdiction any of the functions of a collector under the said Act and, therefore, the order of the SDL&LRO who is at par with the authority who conferred PATTA in favour of plaintiff, has got no jurisdiction to declare plaintiffs PATTA (conferment of title) as invalid.

17. In this context it requires to be mentioned that in **Narendra Nath Roy's Case (supra)** Division Bench of this court has observed that since the Revenue Officer performing the function of the collector under the parent act so, appeal preferred against an order passed by revenue officer should be heard by the West Bengal Land Reforms and Tenancy Tribunal. However, in the present context being aggrieved by the order passed by the SDL&LRO in Appeal case no. 23 of 1998, the plaintiff/appellant chooses not to pray for review of said order dated 22.12.2000 nor he has challenged said order before any appropriate forum. On the contrary, he has accepted the observation of Trial Court that plaintiff has not acquired any title in the suit property and plaintiff is a mere permissive occupier under the lawful owner of the property i.e. defendant. In this context, it would not be out of context to quote

relevant portion of order dated 22.12.2000 which might have discouraged the plaintiff to pray for review or from challenging the specific observations of Trial Court regarding his status in the suit property by making cross-appeal or cross-objection before the court below.

“During hearing, it appears that the petitioner constructed a dwelling house on the suit land and had been living there for the last 30-35 years uninterruptedly. It is also a fact that presently the petitioner is in possession over the suit land. The land originally belonged to one late Sreematya Sibarani Mondal who made a gift in favour of the opponent Sri Purna Chandra Monal vide deed no 5754 dated 1.9.1986. It appears during hearing that the petitioner is her one of the grandsons and the opponent is her one of the sons. Thus the parties involved are directly blood-related. So, the petitioner cannot claim to be the owner of the suit land as Homestead beneficiary belonging to the same family and the suit land is included in the same courtyard and compound. Thus the petitioner Sri Anukul Chandra Mondal is not entitled to come under the purview of the West Bengal Homestead Land for Agricultural, Labourers, Artisans and Fishermen Act, 1975. Accordingly the prayer of the petitioner Sri Anukul Chandra Mondal is dismissed and thus the appeal is disposed of.”

18. Moreover, when the plaintiff/appellant by not challenging the observations of Trial Court has accepted his status as permissive occupier in the suit property, having no right title interest after revocation of licence by the defendant, his possession in the suit property is not authorized by law, and as such perpetual injunction cannot be granted because under section 38 of the Specific Relief Act 1963, a perpetual injunction may be granted to prevent breach of an

obligation existing between the parties and the obligation includes every duty enforceable by law. If the plaintiff applies for an injunction in respect of violation of a right, and where existence of such right appears to have does not exist, plaintiff must establish his right at law and after establishment of his legal right and facts of it's violation, plaintiff is generally entitled to a perpetual injunction to prevent the recurrence of the wrong. In short in obtaining the order of permanent injunction the plaintiff has to prove a legal right and it's violation.

19. In fact plaintiff raised such jurisdictional issue of SDL&.LRO for the first time before this Court in the Second Appeal, which has been preferred against rejection of permanent injunction order by the court below. Plaintiff in his plaint has claimed that he has acquired title in the suit property by way of adverse possession, which he failed to prove. Plaintiff has not filed written statement against defendant's counter claim where defendant prayed for eviction of licensee/plaintiff. In this context the observation made by the Court below may be quoted :-

“The finding of the Ld. Court below recorded on the basis of Ext.-5, Ext.-B & Ext.-C that the result of the case under West Bengal Acquisition of Homestead Land Act, 1975 ultimately went against Anukul has not been challenged in this appeal. Anukul has not also disputed the negative finding of the Ld. Court below about his case of adverse possession or tenancy right. He has not filed any cross appeal or cross objection. Non has he challenged the finding that he was merely a licensee under Purna and Dipak the rightful owners of the suit property. Therefore it stands to reason that nothing but the leave or license granted in favour of Anukul is the subject matter

of this appeal. The aforesaid findings of the Ld. Court below are consequently upheld.”

20. Plaintiff in the present case has failed to establish his legal rights in the suit property rather he has accepted his status in the suit property as permissive occupier. Plaintiff failed to show that his possession in the suit property is lawful after termination of licence by the defendants on 01.01.2001 since the order dated 22.12.2000 still exists and has not been set aside by any Competent Authority. As there is no violation of legal right, I find that merely because plaintiff is in possession of the suit property, may be for a long time, cannot justify his prayer for permanent injunction restraining lawful owner to get possession of the suit property.

21. In such view of the matter I do not find any reason to interfere with the observations made by the court below.

22. SA 381 of 2010 thus stands dismissed. The judgment and decree passed by learned ADJ, Bongaon, dated 10th September, 2010 in T.A. No. 01 of 2009 is hereby affirmed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)