

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA 52 OF 2012

1. Sri Jyotish Chandra Chakma,
son of late Sembo Chakma

2. Sri Binay Chakma,
son of late Kalachanka Chakma

3. Sri Sukrajoy Chakma,
alias Kalapeda Chakma,
son of Sri Kanchan Kumar Chakma

- all are residents of village and post office
Shibnagar(Mritingacherra), P.S. Kanchanpur, District : North
Tripura

4. Sri Gunaban Chakma,
son of Sri Banga Chakma

5. Sri Atul Barua,
son of Sri Satya Barua

6. Sri Gopal Chakma,
son of Sri Suradhan Chakma

- all are residents of Village Srirampur,
P.O. & P.S. Kanchanpur,
District : North Tripura

..... Appellants

- Vs -

Smti. Anita Chakma @ Amita Chakma,
daughter of Sri Sankhasur Chakma alias,
Mangal Jyoti Vikku,
resident of Village & P.O. Shibnagar,
(Mritingacherra), P.S. Kanchanpur,
District : North Tripura

..... Respondent

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellants : Mr. U.K. Majumder, Advocate
For the respondent : Mr. R. Dasgupta, Advocate
Date of hearing and
judgment & order : 15.07.2016
Whether fit for reporting : NO

JUDGMENT & ORDER (ORAL)

Heard Mr. U.K. Majumder, learned counsel appearing for the appellants as well as Mr. R. Dasgupta, learned counsel appearing for the plaintiff-respondent.

2. This is an appeal under Section 100 of the CPC against the judgment dated 30.08.2012 passed in Title Appeal No. 12 of 2012 by the Additional District Judge, North Tripura, Dharmanagar.

3. The appeal has been admitted by the order dated 12.10.2012 for hearing on the following substantial question of law :

"Whether the finding that has been returned by the appellate Court below as regards the possession of the plaintiff is supported by the evidence ?"

4. At the very outset Mr. U.K. Majumder, learned counsel appearing for the appellants has submitted that the

land as allotted in favour of the plaintiff-respondent by way of forest patta by the competent authority under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 has been cancelled by the order under No. F.10(03)/SDM/ACP/TW/2009/30.6.1993 dated 28.11.2013. According to the appellants, the plaintiff-respondent's name appears in Sl. No. 67 in the list of cancelled patta of Kanchanpur Sub Division, which has been enclosed with the said order dated 28.11.2013.

5. Mr. R. Dasgupta, learned counsel appearing for the respondent has seriously disputed the said fact. He has submitted that this second appeal is directed against the concurrent finding of fact as regards the possession of the plaintiff-respondent and as such this court may not interfere such concurrent finding of fact unless it is shown that the finding suffers vice of perversity in appreciation of the evidence. In reply Mr. Majumder, learned counsel has drawn attention to the decision of the first appellate court as recorded in the Para 7 of the impugned judgment dated 30.08.2012 which is as under :

"7. According to the Plaintiff she has got allotment order from the competent authority under the provision of Schedule Tribes and other Traditional Forest Dwellers (recognition of Forest Right) Act, 2006 and as such she is entitled to stay in the allotted suit land. On 25.07.2010 A.D. at about 8 A.M. the defendants and their persons being armed with dao and lathi etc. forcefully and illegally entered into the suit land and threatened plaintiff and her persons with dire consequences and also tried to demolish the constructed hut of the plaintiff in the suit land. On the said premises I am of the opinion that Ld. Trial Court has rightly held that there is a cause of action for filing

the suit. Thus the issue No.(ii) is found correctly decided."

Again in the Para 10, significantly the first appellate court has observed as under :

"10. But the points be noted is that so long as the allotment order is in favour of the Plaintiff and there is no proof from the side of the defendants that she obtained the allotment order by fraud or misrepresentation, it has to be presumed that the allotment order was issued by following the requisite norms and procedure. If the Govt. Khas land or a Reserve Forest land is allotted to a person by the competent authority in exercise of their statutory power, the action of the Govt. authority, unless the contrary is proved, is to be presumed to be correct. If there was any malpractice on the part of the Plaintiff, the defendants are at liberty to approach the collector and get the allotment order cancelled. But so long as it is not cancelled by the collector, the Plaintiff has to be regarded as the recorded holder of the suit land. The order of allotment herein in favour of the Plaintiff has remained unrebutted from the side of the defendants. "

It has been again observed in the Para 11 as under :

"11. Though the defendants have stated that they have preferred objection to the Collector against the allotment of the suit land in favour of the Plaintiff, but the allotment has not yet been cancelled by the competent authority and untill it is formally cancelled by the competent authority, it stands good and carries the proof in favour of the Plaintiff being the legally acceptable allottee of the suit land."

At the relevant point of time no final order was passed.

Thus the first appellate court in the Para 12 had occasion to observe that :

"12. As such I am of the view that on the strength of allotment the plaintiff is entitled to get a decree for perpetual injunction restraining the defendants and their persons or entering into the suit land and from disturbing the peaceful possession of the Plaintiff and his persons. So, the issue No. 3 is found correctly decided by Ld. Trial Court in favour of the Plaintiff and against the defendants."

6. Having regard to these observations of the first appellate court, Mr. Majumder, learned counsel appearing for the appellants has submitted that the final order cancelling the patta as was earlier issued in favour of the plaintiff-respondent has been cancelled by the competent authority, the Sub-Divisional Magistrate, the delegate of the Collector. As such the entire judgment and decree passed by the first appeal has become inexecutable and the declaration as was made in the suit for purpose of granting permanent injunction has become inoperative inasmuch as the declaration so made was on the basis of the allotment order (patta). Even the first appellate court has observed that the defendant-appellants would be at liberty to approach the proceeding for cancellation. Again he has submitted that the perpetual injunction has been made having regard to the allotment order. Since the allotment order has now been cancelled, this court may declare that the impugned judgment has become inoperative.

7. Mr. R. Dasgupta, learned counsel has clearly submitted that this order cancelling the patta is not part of the record and as such, this court should not take any cognizance of the said order.

In the emerging circumstances, this court is of the view that since Mr. Majumder, learned counsel appearing for the appellants has urged this court that he would not like to proceed with the appeal in view of the cancellation of the patta, this appeal may be disposed of on such prayer with liberty reserved to the appellants to take appropriate action at law for seeking that the

decree of permanent injunction has turned to be inoperative in view of the cancellation of the patta.

8. Accordingly, this appeal is disposed of with liberty reserved to the appellants to take appropriate action at law on the basis of the order of cancellation as claimed to have been issued by the competent authority under the said Act of 2006 .

It is made clear that this court has not interfered the findings so returned by the first appellate court. But this order is contingent depending on the future course of action that might be taken by the appellants.

Draw the decree accordingly. Send down the LCRs forthwith.

JUDGE

Sabyasachi.B