

Jagneswar Nath Vs. Jatra Mohan Sarkar

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Court : Guwahati

Decided On : May-21-1979

Judge : K. Lahiri, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 - Order 1, Rules 3 and 13 - Order 8, Rule 2

Appeal No. : Second Appeal No. 48 of 1971

Appellant : Jagneswar Nath

Respondent : Jatra Mohan Sarkar

Advocate for Def. : A.K.S. Choudhury, Adv.

Advocate for Pet/Ap. : M.C. Deb Roy and P.K. Majumder, Advs.

Disposition : Appeal dismissed

Judgement :

K. Lahiri, J.

1. The Plaintiff claims that he is a poor school teacher. He sued for getting khas possession on declaration of his right, title and interest in the suit property. He claims that he purchased the suit land appertaining to Jote No. 72 of Mouja Doulbhari, P. S. Sabroom from Jibananda Ghosh, the owner of the suit property by a registered sale dated 10-4-1962 and continued to possess the same. On the eastern and western sides of the suit land there are Government khas till as. The prede-

cessor-in-title of the plaintiff possessed some tilla slopes and included them within Jote No. 72 and possessed the same for more than 12 years. The plaintiff claimed that he had purchased Jote No. 72 land and also the tilla slope lands and continued his act of possession. He claimed that the land measured 2 Kanis and 7 gandas in Jote No. 72. During the absence of the plaintiff the Defendant ploughed over his land on 21-4-1962 A. D. (8-1-1369 B. S.) and dispossessed him from the land. In due course the land appertaining to Jote No. 72 was measured and found to be 11 gandas and 1 kara of land. The Plaint was amended accordingly. As such, the suit land measured 1 kara 11 gandas in Dag No. 2221 appertaining to Jote No. 72. The Defendant contested the suit, took up several grounds and claimed that the suit land did not appertain to Jote No. 72 of the plaintiff. The Defendant, inter alia, stated in the written statement

'If any Amin or experienced man measures the land on the spot he will find that the land in suit is outside the said Jote No. 72 of the plttff.....

As the land in suit has been turned into an excellent paddy land after reclamation it has become a very valuable piece of property and the plttf. of this suit, taking advantage of his being owner over the land of said Jote No. 72 standing to the contiguous west of the land in suit, has brought up this false and groundless suit with a view to grab the valuable allotted land of the answering defdt.....'. (Underscored by me).

According to the defendant, he came as a refugee in 1950 A. D. from the then East Pakistan and was allotted 3 kanis of Government khas land which lay contiguous east of Jote No. 72. It is worthwhile to mention at this stage that, inter alia, the defendant took up the plea reading 'The plttfs, suit is bad and untenable for the defect of non-joinder of party'. There is nothing in the written statement as to who were those parties for whose absence the suit was bad or untenable.

2. The main issue framed was:

'Does the suit land appertain to jote No. 72 of mouja Doulbhari under Sabroom P. S. Or Government Khas land allotted to defdt. in the year 1961 A. D.?'

In order to arrive at the conclusion the learned Munsiff considered the order dated 5-5-1969 passed by his predecessor accepting the Commissioner's report and documents, namely. Exts. C-1, C-2 and C-3 and Exts. A-1 (Khatian) and A-2

and has held that the suit land is 11 gandas 1 kranta of Dag No. 2221. When the land was so measured the plaintiff gave up his claim in respect of the rest of the suit land. The learned Munsiff on perusal of the evidence arrived at the conclusion that the said suit land measuring 11 gandas 1 kranta in Dag No. 2221 appertains to Jote No. 72 which had been purchased by the plaintiff and was not the land which was allotted to the defendant. As such, as desired by the defendant the suit land was measured by a Commissioner and the report of the Commissioner is that the suit land was never allotted to the defendant but was the purchased land of the plaintiff appertaining to Jote No. 72.

The learned Munsiff has held that the plaintiff has right, title and interest over the suit land, the defendant never acquired any right or title by adverse possession nor the suit was barred by limitation. He found the plaintiff's story of possession and dispossession to be true and that there was no non-joinder of necessary parties. The learned Munsiff decreed the suit as prayed for by the plaintiff in respect of 11 gandas 1 kranta of the suit land. Before the First Appellate Court the appellant-defendant urged only one point, namely, whether the plaintiff-respondent had title and possession over the disputed land. The learned Additional Subordinate Judge on perusal of the documentary and oral evidence and after thorough discussion thereof confirmed the decree of the court of the first instance.

3. Before me Mr. M. C. Deb Roy, the learned counsel for the Appellant has urged that the suit is bad for nonjoinder of the mother of the vendor Jibananda Ghosh and that the suit is bad for not impleading the Government of Tripura in the instant suit No other point has been urged by Mr. M. C. Deb Roy. In order to appreciate the argument of Mr. Deb Roy it is necessary to state that the land was originally owned by Jamini Kumar Ghosh and after his death the plaintiff purchased the suit land from Jibananda Ghosh. According to the learned counsel for the Appellant, the mother of Jibananda. that is, wife of late Jamini Kumar Ghosh is still alive and the suit could not have been

proceeded against the defendant without making her a party to the suit. According to Mr. A. K. S. Choudhury, the learned counsel for the respondent, the contention has no substance. He has very rightly pointed out that the plea of nonjoinder of Jamini's wife was never taken

specifically in the pleading enabling the plaintiff to add her as a party to the suit. A bare perusal of the written statement clearly shows that no such plea was taken by the defendant, Order 1 Rule 1 Civil P. C. enjoins as to who may be joined as plaintiffs. Order 1 Rule 3 prescribes as to who may be joined as defendants. Order 1 Rule 9 lays down that for non-joinder or misjoinder of parties a suit shall not be defeated if the court can deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Order 1, Rule 13 enjoins that all objections on the ground of non-joinder or misjoinder of parties must be taken at the earliest possible opportunity. Order 8, Rule 2 imposes obligation on the defendant to raise in his pleading all matters which show the suit not to be maintainable. They should be specifically pleaded. If not raised specifically, the other party would be likely to be taken by surprise. In the instant case, the plea that mother of Jibananda was a necessary party was not taken up specifically. If taken she could have been made a party. In my opinion, a vague statement that the suit is not maintainable for non-joinder of necessary parties does not tantamount to taking up a specific plea that a particular necessary party has not been added as a party for which the suit must fail. Therefore, in my opinion, the plea of non-joinder of Jibananda's mother not having been taken up specifically the defendant-appellant is not entitled to raise the plea at the close of the trial. Further, this point was never agitated before the First Appellate Court and as such must be deemed to have been waived.

That apart, the question is as to whether there is any material in evidence to show that Jibananda's mother had any right, title or interest in the suit property. Merely because Jibananda's mother is the widow of Jamini, it cannot be said that she had any right, title or interest in the land. Only on proof that she did not relinquish her right or that Jibananda himself did not inherit the suit property as the sole heir can it be said that Jibananda's mother has had any right, title or interest in the suit land?

4. That apart, as submitted by Mr. A. K. S. Choudhury, the learned counsel for the respondent, the defendant himself admitted the ownership of the plain-

tiff in respect of the land covered by Jote No. 72, the question of non-joinder of Jibananda's mother is an argument in desperation. It is undeniable that the defendant in the written statement has clearly admitted that the plaintiff is the owner of Jote No. 72. I have already quoted above the admission of the defendant as to the ownership of the plaintiff in respect of the land covered by Jote No. 72. As a result of the foregoing conclusion I am constrained to hold that the contention of the learned counsel for the Appellant that the suit is bad for non-joinder of Jibananda's mother has no substance at all.

5. The next contention of the counsel for the Appellant that Government of Tripura is a necessary party in the proceeding must be rejected forthwith. In the instant case, the plaintiff claimed ownership of Jote No. 72. The plaintiff gave up his claim in respect of the land other than 11 gandas and 1 kara of land in Jote No. 72. The courts below have found that the suit land appertains to Jote No. 72. Under these circumstances, when the plaintiff did not pray for declaration of right, title or interest in any Government khas land, the question of impleading the Government of Tripura

appears to me to be quizzical. I do not find any substance in the contention.

6. In the result, the appeal is dismissed with costs.

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