

A SMT. GITARANI PAUL  
v.  
DIBYENDRA KUNDU ALIAS DIBYENDRA KUMAR KUNDU

DECEMBER 6, 1990

B [KULDIP SINGH AND K. RAMASWAMY, JJ.]

*Civil Procedure Code, 1908: Section 100—Concurrent finding of facts—Ignoring of in Second appeal—Issue not raised or argued before Courts below—Acceptance of—Whether justified.*

C *West Bengal Estates Acquisition Act, 1953: Under-Raiyats—Sale of their rights—Approval of higher authorities—Whether required.*

D The appellant purchased the suit land from Bauries, the under-Raiyats by way of sale deeds, after the coming into force of the West Bengal Estates Acquisition Act, 1953. It was stated that defendants 1 and 2 accompanied by some Policemen had disturbed the possession of the appellant-plaintiff by destroying the standing crop and planting gamagrass seedlings in the land. Hence the appellant instituted a suit for declaration of title and possession of the suit land. The trial Court decreed the suit in favour of the appellant-plaintiff.

E On an appeal filed by the Defendants, the First Appellate Court affirmed the findings of the trial Court.

F Aggrieved, Defendant No. 1 filed a Second appeal before the High Court. Reaching a finding that the actual date of dispossession was not specifically mentioned in the plaint and unless the same was pleaded and proved, the suit for possession was not competent, the High Court allowed the appeal and set aside the judgments of the Courts below.

The appellant-plaintiff has preferred the present appeal, by special leave, against the High Court judgment.

G Allowing the appeal, this Court,

H HELD: 1. The High Court fell into error in ignoring the concurrent findings of the Courts below and accepting the appeal on an issue which was neither raised nor argued before the Courts below. The High Court misread the pleadings and the evidence on the record. [467B-D]

2. In the face of clear pleadings and the evidence on record the High Court was wrong in reaching the conclusion that there was no pleadings and evidence regarding dispossession. Even otherwise in the face of the finding of the Courts below that the appellant-plaintiff had proved her title it was not necessary for the High Court to go into the question of ascertaining the date of dispossession. [468A-B]

3. There is nothing on record to show that the Bauries could not sell their rights as under-Raiyats without the approval of the higher authorities. Neither there are any pleadings on this point nor any evidence was led before the trial Court. [468C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4050 of 1985.

From the Judgment and Order dated 12.7.1984 of the Calcutta High Court in Appeal from Appellate Decree No. 203 of 1970.

D.N. Mukherjee (N.P.), N.R. Choudhary and Ranjan Mukherjee for the appellant.

D.P. Mukherjee and G.S. Chatterjee for the respondent.

The Judgment of the Court was delivered by

**KULDIP SINGH, J.** Gitarani Paul instituted a suit for declaration of title and possession in respect of thirteen plots of land in Mouza Boinchee, Police Station Pandua, State of West Bengal. It was averred in the plaint that the said land was under the possession of Bauries who were under-Raiyats. The original owner of the land was Dasarathi Dutta but the land has throughout been under the holding of the under-Raiyats. After the coming into force of the West Bengal Estates Acquisition Act, 1953 Dasarathi Dutta ceased to have any right or interest in the land and the same stood vested in the State of West Bengal. Gitarani Paul purchased the land from the Bauries by way of sale deeds dated February 19, 20 and 26, 1960. According to her the possession of the land was also delivered to her by the Bauries. It was further stated in the plaint that on June 5, 1960 one Dibyendra Kundu armed with gun and accompanied by some police-men came to the land in dispute and destroyed the standing crop of the plaintiff. It was also alleged that Dibyendra Kundu ploughed the land and planted gama grass seedlings in the land. It was on these facts that the suit was filed. Dibyendra Kundu and Dasarathi Dutta were arrayed as defen-

A     dant 1 and defendant 2 in the suit. The Bauries were impleaded as Proforma defendants.

B     Dasarathi Dutta controverted the stand of the plaintiff. According to him, the Bauries surrendered their rights and also the possession of the land to his father in the year 1938. He further stated that after the death of his father he sold the land to Dibyendra Kundu on May 7, 1959 and also delivered the possession of the land to him.

C     The trial Court on the appreciation of oral and documentary evidence came to the conclusion that the Bauries never surrendered their tenancy in favour of the father of Dasarathi Dutta defendant No. 2 and also that the sale of the suit land by the Bauries in favour of plaintiff was valid and the plaintiff had title to the suit lands. On these findings the trial Court decreed the suit. Defendants 1 and 2 went in appeal before the Sub-ordinate Judge, Hooghly. The learned Judge affirmed the findings of the trial Court and dismissed the appeal.

D     Defendant 1 Dibyendra Kundu further filed an appeal before the High Court at Calcutta. Without disturbing the concurrent findings of the Courts below the High Court found that the actual date of dispossession was not specifically mentioned in the plaint and unless the date of dispossession was pleaded and proved the suit for possession was not competent. The High Court accepted the appeal and set aside the judgments of the Courts below in the following words:

F     “It appears that the plaintiff’s husband and the other witnesses of the plaintiff have only stated that the defendants Nos. 1 and 2 in collusion with the police had disturbed the possession of the Bauries and the plaintiff and had destroyed the crops but none of the witnesses had stated about dispossession and/or the actual date of dispossession of the plaintiff.

G     In the circumstances, the plaintiff cannot get a decree for recovery of possession unless the plaintiff can establish that within 12 Years from the date of dispossession, the suit had been instituted. In the absence of any proof of dispossession within the period of limitation, the prayer for recovery of possession must fail. In the aforesaid facts, it may not be necessary to decide the other question namely whether or not the Bauries had, in fact, abandoned their tenancy.”

H

This appeal, via special leave petition by the plaintiff Gitarani Paul, is against the judgment of the High Court. A

We have heard learned counsel for the parties. The trial Court and the lower appellate Court concurrently found that there was no surrender of tenancy rights by the Bauries to the father of Dasarathi Dutta defendant No. 2. It was also found by the said Courts that the sale of the land by the Bauries to the appellant-plaintiff was valid and binding. The title of the appellant-plaintiff to the land in dispute having been proved she was entitled to a decree for possession. The High Court fell into error in ignoring the concurrent findings of the Courts below and accepting the appeal on an issue which was neither raised nor argued before the Courts below. The High Court misread the pleadings and the evidence on the record. Paragraphs 4 and 5 of the plaint are as under: B C

“That on the 5th day of June, 1960, the Principal defendant armed with a gun-alone with some police men went to the disputed land and destroyed the Kurma plant and gama grass and cultivation of the plaintiff, ploughed the disputed land and planted gama grass seedlings and thereafter left the place, It has, therefore, become necessary to institute the suit for declaration of title and recovery of possession and consequential relief”. D E

“The cause of action for this suit has arisen on the 5th day of June, 1960 the day of dispossession de diem, en diem.”

The plaintiff, thus, clearly pleaded that she was dispossessed from the land by the defendants on June 5, 1960. The evidence produced by the plaintiff amply proved that defendants 1 and 2 in collusion with the police disturbed the possession of the plaintiff. Trial Court noticed the evidence of P.W. 3 Narayan and P.W. 5 Lakshman in the following words: F

(P.W. 3 Narayan) says “that as the plaintiff’s labourer he cultivated certain crops in the suit lands and that the defendants with police help destroyed the crop”. G

P.W. 5 Lakshman says “that from the doba, situated on one of the disputed plots, he caught fish at the plaintiff’s instance.” H

- A** In the face of clear pleadings and the evidence on record the High Court was wrong in reaching the conclusion that there was no pleadings and evidence regarding dispossession. Even otherwise in the face of the finding of the Courts below that the appellant-plaintiff had proved her title it was not necessary for the High Court to go into the question of ascertaining the date of dispossession. We, therefore, do not agree with the reasoning of the High Court and set aside the same.
- B**

- C** Mr. Mukherjee learned counsel appearing for the respondent has, however, contended that the Bauries could not sell their rights as under-Raiyats without the approval of the higher authorities. Neither there are any pleadings on this point nor any evidence was led before the trial Court. We do not, therefore, find any force in the contention.

We allow the appeal, set aside the judgment and decree of the High Court and restore the judgment and decree of the trial Court. The suit of the appellant-plaintiff is decreed with costs. We quantify the costs at Rs.5,000.

G.N.

Appeal allowed.