

A SMT. BELI RAM SINGH CHOWDHARY AND ORS.

v.

STATE OF ASSAM

OCTOBER 31, 1995

B [K. RAMASWAMY AND B.N. KIRPAL, JJ.]

Assam Acquisition of Zamindaries Act, 1951.

C *Lands—Vesting of in State—Suit for declaration of title to land and possession—Plea of adverse possession—Held, adverse possession is an encumbrance under State Revenue Act and it does not bind State.*

D The appellants filed a suit for declaration of title alleging that the lands in dispute were given to their predecessor-in-interest as dowry at the time of her marriage and that she and thereafter her successors including the plaintiffs had been in possession and enjoyment of the lands in their own right; and that the lands did not stand vested in State under the Assam Acquisition of Zamindaries Act, 1951. The Trial Court decreed the suit. But, on appeal, the first appellate Court dismissed the suit holding that the plaintiffs failed to prove their case. In the second appeal, the High E Court while upholding the findings of the first appellate Court, passed a conditional decree directing the State to pay compensation to the plaintiffs, if not already paid. Aggrieved, the plaintiffs filed the appeal by special leave.

F **Disposing of the appeal, this Court**

G **HELD : 1. The findings of the High Court that the plaintiffs having failed to prove their title to the lands and that it did not form part of acquisition under the Assam Acquisition of Zamindaries Act, 1951 did not remain as owners of the lands which stood vested in the State, are not vitiated by any manifest error of law warranting interference. [622-E]**

H **2. The High Court was right in holding that the adverse possession is an encumbrance under the State Revenue Act and it does not bind the State. Therefore, as against the State, the appellant had not perfected their title by adverse possession. Since the appellants had asserted title to the property, burden is on them to establish the same which they failed to**

establish. [622-B-C]

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3. As regards the conditional decree granted by the High Court with regard to payment of the compensation, it is for the appellants to make an application to the appropriate authority seeking payment. [622-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 743 of 1982.

From the Judgment and Order dated 4.8.81 of the Assam High Court in Second Appeal No. 17 of 1976.

S.K. Nady for the Appellants.

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S.N. Choudhary and Shakeel Ahmad for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave arises against the judgment and decree dated August 4, 1981 of the Guwahati High Court at Guwahati made in S.A. No. 17/76. The appellant-plaintiffs filed the suit for declaration of title that the lands in Chaibari Village which were part of Machpara Estate were given to Dayamoree Devi, daughter of Rai Bahadur Prithiram Chowdhury, the holder of the said estate as dowry at the time of her marriage and that she and thereafter her successors including the plaintiffs had been in possession and enjoyment of the lands in their own right. The lands therein did not stand vested in the State of Assam under the Assam State Acquisition of the Zamindaries Act, 1951. The Trial Court decreed the suit. But on appeal, the District Judge reversed the decree and held that the appellants had failed to prove that the appellants possessed the lands in their own right and that it was not vested in the State. Accordingly, the suit was dismissed. In second appeal, while upholding the findings of the appellate Court, the learned Single Judge of the High Court held that if the compensation for the lands comprised in Chaibari Village were not paid, a conditional decree was passed directing the State to pay the compensation in respect thereof to the appellants. Thus this appeal by special leave.

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Shri S.K. Nandy, learned counsel for the appellants, has contended that since the lands had passed on from the Zamindar to his daughter as dowry, she became the absolute owner of the property. The State had not

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A proved that they had acquired the land under the Act and that compensation was paid to them. Thereby the lands did not vest in the State. The High Court, therefore, was not right in holding that the title of the land in favour of the appellants stood extinguished under the Act. We find no force in the contention.

B The High Court has gone into the question of adverse possession pleaded by the appellants and held that the adverse possession is an encumbrance under the State Revenue Act and it does not bind the State. Therefore, as against the State, the appellant had not perfected her title by adverse possession. It was also held that since the appellants had asserted title to the property, burden is on the appellants to establish that they had title to the plaint schedule lands and continued to have title thereto. Since they failed to establish the title, the appellants cannot be held to be the owners of the land. High Court called upon the Government to produce certain notifications. Since they were not produced, the High Court had expressed its displeasure for the lethargy on the part of the officials of the Government but that was not conclusive. The ultimate finding is that the appellants had not proved their title to the lands and they did not form part of the acquisition under the Act. They did not remain as owners of the lands and the lands stood vested in the State. These conclusions reached by the High Court are not vitiated by any manifest error of law warranting interference.

However, the High Court had granted conditional decree, namely, the payment of the compensation, if not already paid. It is, therefore, for the appellants to make an application to the appropriate authority seeking payment, if not already received, and the competent authority would consider and dispose of the matter within three months from the date of making the application for payment of compensation, if not already paid. The appeal is disposed of in above terms. No costs.

R.P.

Appeal disposed of.