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15-11-2021

SAT 2 of 2014

Ct. 8

Srimantalal Ghosh & Ors.
Versus
Samar Saha & Ors.

(Through Video Conference)

Mr. Pinaki Dhole, Adv.

...for the appellants

The learned Counsel for the appellants, at the stage of admission of the second appeal, has argued that both the Courts below have failed to take into consideration that the plaintiffs have failed to prove their title over the suit property and had decreed the suit on the basis of the weakness of the defence of the defendants. It is submitted that the onus is on the plaintiffs to establish their title before they claimed any decree for declaration of their title over the suit property.

It is submitted that the evidence of the defendants has been ignored the deed of gift which would conclusively establish that the plaintiffs have no right, title and interest over the suit property.

We have carefully considered the judgments of both the courts. The learned Civil Judge (Junior Division), being the First Court has considered the evidence and relying upon the documentary evidence which, inter alia, include the original purchase deed being No. 13796 dated 28th February, 2010, the original purchase deed of Niyamul Haque and Md. Enamul Haque, the certified copy of the finally published LR record of rights, came to the conclusion that all the documentary evidence taken with the oral evidence would

conclusively suggest and establish that the plaintiffs had purchased the property from the transferees, namely, Niyamul Haque and Enamul Haque and the defendants did not challenge the purchase deed of the plaintiffs.

The aforesaid documents were exhibited and supported by the oral evidence. The primary evidence of the defendants before the learned Trial Court appears to be a certified copy of CS khatian No. 508 and a deed of gift. The aforesaid documents marked as exhibit 'A' does not relate to the property at all and, as such, held to be irrelevant rightly by both the Courts. The original deed of gift was also not proved in course of the trial. In fact, the learned Counsel appearing on behalf of the appellants does not make much argument with regard to the finding on the deed of gift.

The entire evidence was considered by the Appellate Court. The Appellate Court considered exhibits 2, 3 and 4, being, the registered deed of conveyance by which the plaintiffs became the owner of the suit property, the khatian wherefrom the name of the original owner of the suit property had transpired and the tax receipts wherefrom it reveals that the plaintiffs had paid tax in respect of the suit plot of land respectively and on scrutiny and appreciation of the evidence of the plaintiffs arrived at a finding that the documentary evidence taken along with the oral evidences clearly establish the ownership of the plaintiffs in respect of the land in question. The registered deed of conveyance was marked as exhibit without any objection. The defendants had failed to prove any document of title in respect of the suit property.

In a second appeal unless there is a substantial question of law involves, the Court does not assume any jurisdiction to admit the

second appeal. It is not a matter of right. There are well-established principles regarding admission of second appeal. There has to be misappreciation of evidence, misconstruction of documents causing grave injustice or ignoring material evidence by the Trial Court or the Appellate Court to mention a few where the second Appellate Court may decide to admit.

In the instant case, the concurrent finding of facts are based on documents and oral evidence which clearly established the title of the plaintiffs over the suit property. The concurrent findings of fact is not normally interfered with at the stage of admission of second appeal unless the findings are perverse. In absence of any perversity being noticed by us, we are not inclined to admit the second appeal.

In view of the aforesaid, the appeal stands dismissed. However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)