

16 08.12.21

Ct. No. 04

Akd

SAT 6 of 2014

with

I.A. No. CAN 1 of 2014 (Old No. CAN 184 of 2014)

Alamin Mallick & Ors.

Vs.

Chand Mahammad Mallick & Ors.

Mr. Dipayan Kundu,

Mr. Avinaba Patra.

... for the appellants.

The instant appeal is filed assailing the judgment and decree dated 20th July, 2013 passed by the learned Additional District Judge, 2nd Court, Krishnagar, Nadia in Title Appeal No. 10 of 2012 reversing the judgment and decree of the Trial Court in part by declaring the undivided half share in favour of the plaintiffs in respect of the suit property.

The suit was filed by the plaintiffs/respondents asserting their absolute right in respect of the suit property and the defendants were threatening and interfering with the possession upon denying the title of the plaintiffs.

It is undisputed that both the parties traced their title through a common person, but were at variance whether the property comprised in the suit was initially owned by Abbas Mallick exclusively or as a co-sharer having undivided half share with Kopan Mallick. Undeniably Abbas Mallick and Kopan Mallick were the full blood brothers and the property originally belonged to Jaminder Nrisingha Prasad Sen and others.

According to the plaintiffs, the suit property was settled by the Jaminder in favour of Abbas Mallick on the basis of a deed of settlement, who in turn transferred the aforesaid property in favour of his wife, namely Chapura Bibi in lieu of dower. The said Chapura Bibi subsequently transferred the property,

which she acquired from her husband, in favour of her son, namely Mohabbat Mallick on 3rd April, 1974.

The genesis of the dispute can be traced when the alleged deed of transfer was executed by Chapura Bibi in favour of her son on 3rd April, 1974. It was the defence case that the Abbas Mallick was not the absolute owner of the suit plot, but was a co-sharer with Kopan Mallick. Subsequently the fraudulent deed was executed by Abbas Mallick in favour of his wife divesting his right, title and interest in respect of the entire property, which is per se illegal, as he was only having undivided half share therein.

It is further contended that upon execution of the deed of transfer on 3rd December, 1970 by Chapura Bibi in favour of Kopan Mallick the share of Abbas Mallick, which she got by way of transfer, stood vested in Kopan Mallick, who thereafter became the absolute owner thereof.

There is no material forthcoming before the Court that Kopan Mallick was a co-sharer with Abbas Mallick at the time of settlement by the Jaminder. In fact, the name of Kopan Mallick was included in the Record of Rights subsequent to the execution and registration of the deed of sale by Chapura Bibi in the year 1970. Had it been the case that Kopan Mallick was a co-sharer, then there was no necessity of purchasing the half share, which he allegedly had upon payment of the consideration money. Even apart, Kopan Mallick did not assert an exclusive right in respect of the suit property, as the Record of Rights evidently shows Kopan Mallick to be a co-sharer and owner to the extent of 8 annas in respect of the suit property. Though the entry into the Record of Rights is not a determinant factor for ascertainment of title as it neither confers title nor extinguishes the same, but such entry has a presumptive value of the

correctness.

The deeds have been executed by the respective parties and it is a categorical finding returned by the Appellate Court that by virtue of a deed of 1970 Kopan Mallick acquired undivided half share in the suit plots and, therefore, the contention of the plaintiffs/respondents that they are the absolute owners is not acceptable.

It is no doubt true that the deeds executed more than 30 years ago has a presumptive value of its due execution and, therefore, we do not find any infirmity in the findings of the Appellate Court that Kopan Mallick acquired undivided half share in respect of the suit plots on the strength of the deed of transfer executed by Chapura Bibi in the year 1970.

Since the defendants/appellants claimed right, title and interest through Kopan Mallick, they cannot elevate their status above the status of Kopan Mallick and, therefore, we find no impediment in declaring the share of the plaintiffs to the extent of 8 annas in respect of the suit plots.

We thus do not find any substantial question of law involved in the instant appeal.

The appeal is thus dismissed. The connected application being CAN 1 of 2014 is also dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

