

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Sugato Majumdar

S.A.T. 2139 of 2005

Dasharath Mahato
Vs.
Shrimati Rabani Mahato & Ors.

For appellant : Mr. Rabindranath Mahato, Adv.
Mr. Aritra Shankar Ray, Adv.

Heard on : 15th and 16th September, 2021.

Judgment on : 16th September, 2021.

Arindam Sinha, J.: Mr. Mahato, learned advocate appears on behalf of appellant, who was defendant no. 3 in the suit. He submits, there were two scheduled properties in suit. One was 'ka' schedule property and the other, 'kha' schedule property. Both were recorded as joint property in Revenue Survey Record of Rights (RSROR). That is the correct position because irrespective of the deeds of 1928 and 1935, showing Mohan Mahato to be purchaser of 'ka' schedule property, said person was one of four sons of Bahadur Mahato and scheduled properties were and are joint family properties. The purchase was made out of joint family fund. Record in RSROR is corroboration but both Courts below erred in appreciating the evidence. In fairness he adds, the point of limitation was not urged in the Courts below and cannot be taken here in second appeal.

He suggests two questions to be substantial questions of law involved in the appeal, for its admission. The suggested questions are reproduced below:

"1. Whether the learned Judges in the Courts below substantially erred in law in decreeing the suit by wrongly applying

the principle of law that records of right being exhibit 4 series cannot confer title of the property in favour of any person, when such exhibited documents are construing the principle of law that since the property has been purchased from the nucleus fund of the joint family, property has been recorded in the names of all the members of the joint family, which is the specific pleading of the defendant No.3/appellant.

2. Whether the learned Judges in the Courts below substantially erred in law in not considering the legal effect of the payment of rent by other than Mohan's heirs, as appearing in the rent receipts being exhibit 2 series and B series as the same reflects the nature of the property as joint indicating purchase of Ka schedule suit property from the nucleus fund of the joint family and accordingly the judgement is perverse."

He relies on judgment of Supreme Court in **Sebastiao Luis Fernandes v. K.V.P. Shastri** reported in **(2013) 15 SCC 161**, paragraphs 33 to 35. He submits, in paragraph 35 said Court relied on its earlier judgment in **Hero Vinoth v. Seshammal** reported in **(2006) 5 SCC 545**, wherefrom paragraph 24 was extracted and reproduced. He relies on clauses (ii) and (iii) in the extract. He submits, these clauses are respective interpretation on substantial questions of law arising in relation to contentious issue(s) and perversity. The questions suggested arise out of contentious issue regarding joint family purchase of property and corresponding entries in RSROR.

We have perused the judgments. The suit was initially decreed. On first appeal there was remand and amendment carried out. The trial Court by judgment dated 9th March, 2000, once again decreed the suit. Right, title and interest of plaintiffs and defendant no. 5, over 'ka' schedule property, was declared and defendant nos. 1 to 4 permanently restrained from interfering with their possession in respect of said schedule property. Plaintiffs and defendant no. 5 also got decree for partition in preliminary form in respect of 1/4th share in 'kha' schedule property. The lower appellate Court upheld judgment of the trial Court.

Bahadur was owner of 'kha' schedule property. Plaintiffs and defendants are descendants of Bahadur. Mohan was one of four sons of Bahadur. Plaintiffs

say, themselves and defendant no. 5 are heirs of Jadu, another of the sons of Bahadur. Mohan had purchased by deeds of 1928 and 1935, 'ka' schedule property. Ultimately, the property and share of Mohan devolved upon Jadu. Hence, their claim of 16 annas share in 'ka' schedule property and 1/4th share in 'kha' schedule property.

In **Sebastiao Luis Fernandes** (supra) there was reliance on **Hero Vinoth** (supra) for interpretation of what are substantial questions of law meriting satisfaction of the High Court in admitting second appeals. Misconstruction of a document or wrong application of a principle of law in construing a document gives rise to a question of law, Supreme Court said. In the case at hand plaintiffs relied on two deeds, of 1928 and 1935. The deeds were of conveyance. On facts there was neither dispute regarding the deeds nor their interpretation. We have already stated about Mohan having purchased by those deeds and his brother Jadu succeeding to his property and share. Both Courts concurrently held that assertion of appellant, of the purchases made from joint family fund, could not be proved.

Clause (ii) in paragraph 24 of **Hero Vinoth** (supra) is interpretation of a question of law on, inter alia, debatable legal issue. The urged debatable legal issue in this case is claim of title based on record in RSROR, on contention of joint family property. It is well settled, entry in record of rights gives rise to a rebuttable presumption of title because possession is many parts of title. This presumption was successfully rebutted by plaintiffs, as concurrently held by both Courts below, on reliance of said deeds of 1928 and 1935. Said Courts also found that the assertion by appellant of 'ka' schedule property purchased from joint family fund and thereby the entries in RSROR, could not be proved by him. The lower appellate Court said, contention that the purchases were made out of joint family fund required, at least, proof of existence of joint family, even if no person was alive to competently depose in respect of the

deeds of 1928 and 1935. It said further, admission by a plaintiff witness of defendant no.3 having possession in 'ka' schedule property could not cloud title of plaintiffs in respect thereof. The admission would have mattered if said defendant had claimed title by adverse possession.

The second suggested question is based on legal effect of payment of rent by other than Mohan's heirs, to reflect nature of the property as joint, indicating purchase of 'ka' schedule property from the nucleus fund of joint family. The trial Court dealt with the contention saying, inter alia, as follows:

“At the time of argument, ld. advocate for the defendant no.3 made submission regarding possession of the suit property by defendant and in support of this he referred to some tax receipts. In this regard, it is settled proposition of law that tax receipts can not confer title to either of the parties. Hence, it is clear that plaintiffs have 1/4th share over the Kha schedule property.”

It appears, the contention based on the rent receipts, was not argued in the first appeal.

The trial Court has analysed the evidence and further evidence adduced on remand. Plaintiffs had the deeds by way of documentary evidence. Furthermore, their claim made, of them and defendant no. 5 having 1/4th share in 'kha' schedule property, stood admitted by appellant. Appellant's assertion of purchase out of joint family fund could not be proved at trial. The lower appellate Court concurred. We are not satisfied that such findings gives rise to a substantial question of law, either in relation to the issue decided or the findings being perverse.

S.A.T. 2139 of 2005 is dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)