

08.12.2021  
Court No.8  
Item No.15  
SB / AB

SAT 547 of 2018

Naimul Hoque & Anr.  
Vs.  
Chakku Mandal & Ors.

Mr. Tapas Kr. Bhattacharyya  
Mr. Aviroop Bhattacharyya .... For the Appellants

The second appeal is arising out of an appellate decree affirming the decree passed by the learned Trial Court in connection with the suit for declaration and permanent injunction.

This suit property belonged to one Haricharan Mandal. He was the owner of 16 anna share of the said suit property. The suit property was recorded in the name of Haricharan Mandal in the LR Record of Rights. Haricharan was in possession of the said suit property and he died while he was in possession of the suit property. At the time of his death he was survived by his three sons and one daughter some of whom are the plaintiffs in the instant suit. The said plaintiffs being the legal heirs of Haricharan inherited the said suit property. During the enjoyment of the possession of the suit property by the plaintiffs, it is alleged that the incumbent dispossessed of the suit property. The defendants alleged that they have purchased the suit property from Haricharan Mandal by a registered deed of sale and ousted the plaintiffs from the said suit property. It was in the aforesaid purpose the plaintiffs instituted the suit for declaration and permanent injunction in the Trial Court. The

defendants have admitted that Haricharan Mandal became the owner of 18 decimal of land in the suit property. They also admitted that they derived the title in the suit property from Haricharan, being deed No. 10776. Curiously the defendants / appellants did not produce the original sale deed, instead, they produced a certified copy of the alleged sale deed without taking any steps to prove the document in the trial court or in the appellate court in accordance with law. The said document was not admitted in the evidence and was not marked as Exhibit. Both the trial court as well as appellate court did not take cognizance of the said document as the said document was not proved in accordance with law. Both before the trial court and the appellate court, the plaintiff was able to prove right, title and interest in the suit property as legal heirs. However, the plaintiffs in both the courts below failed to establish possession.

The evidence on the contrary would go to show that the defendants had paid the rent in respect of the land in question and were in possession of the land after the death of Haricharan although a cloud has been casted with regard to the right and interest of the defendant over and in respect of the suit property by reason of the failure on the part of the defendants to produce the original deed of sale and no explanation was offered before the appellate court for not producing the original sale deed. However, the fact remains that the defendant could establish their possessory right. DW3 in his examination in chief has stated that the suit land has been possessed by the defendants for a long period of time and this

evidence had remained unshaken during cross examination. The rent receipt filed on behalf of the defendants before the trial judge reflected that the defendants have paid taxes in respect of the said land in question in the name of Haricharan. The plaintiff could not offer plausible explanation as to why after inheriting the suit property from Haricharan, no steps were taken to record their names in the record of rights in respect of the said land.

It is settled law that the record of rights are reflection of the creation of a new tenancy in favour of the person in whose name the record is made and such a entry in the record of rights is the proof of persons holding possession of the property. (See. ***Prafulla Kr. Shome v State of West Bengal & Ors.*** reported in **2002 (3) CHN 13 DB**; ***State of Maharashtra v Maruti Shripati Dubal*** reported in **1996 (6) SCC 43**; ***M.T.W. Tenzing Namgyal & Ors. V Motilal Lakhotia & Ors.*** reported in **AIR 2003 SC 1448**)

The entry in the record of rights although does not confer any title on the person in possession but it certainly protects the possessory rights of a person. While on the one hand the appellant professed title to the property by reason of the sale deed, the plaintiff claimed title and possession by inheritance. On the appreciation of facts and law we feel that both the courts have partly decreed the suit in so far as the right, title and interest of the plaintiff is concerned based on their right of inheritance as legal heirs of the deceased but did not allow the prayer for permanent injunction in absence of any evidence to show that the plaintiffs at the relevant point of time were in

possession and were dispossessed. The suit was not for recovery of possession but of permanent injunction which presupposes the plaintiffs to be in possession.

Before the appellate Court the plaintiff filed an application Order XLI Rule 27 of the Code of Civil Procedure to produce LR ROR to prove possession. The said application was rejected. However, no appeal was preferred by the plaintiffs against the order of rejection.

Both oral and documentary evidence suggest that the plaintiff was never in possession after the death of their father and regard being had to the fact that the oral and documentary evidence suggest possession of the defendants in the suit property for a long period of time, we are of the view that the findings of the appellate court in affirming the decree of the trial court does not call for any interference. Moreover, the concurrent findings of facts by both the courts below are based on oral and documentary evidence and on proper appreciation of evidence. The plaintiffs did not prefer any appeal. Unless the said findings are perverse and substantial question of law is involved, second appeal cannot be admitted.

In view thereof the second appeal fails.

However, there shall be no order as to costs.

**(Ajoy Kumar Mukherjee, J.)**

**(Soumen Sen, J.)**