

20.12.2021
SL No.07
Court No.1
(AJ/SM)

Circuit Bench of Calcutta High Court
At Jalpaiguri
(Via video Conference)

SAT 15 of 2021

Md. Rabi Sarkar alias Md. Rabiul Sarkar
-Vs-
Sri Krishna Debnath & Ors.

Mr. Sibasis Ghosh,
Mr. Haider Ali,
Mr. Abhisek Palit.
... for the appellant.

Leave is granted to the learned advocate for the appellant to remove the defect pointed out by the Additional Stamp Reporter in his report dated November 23, 2021.

The instant Second Appeal is at the instance of the defendant no. 1 in a suit for declaration of title and it is directed against the appellate decree passed in Title Appeal No. 28 of 2014 by the learned Additional District Judge at Mekhliganj, District: Coochbehar thereby affirming the judgment and decree passed by the learned Civil Judge (Junior Division) at Mekhliganj, District Coochbehar in Title Suit No. 01 of 2007 dated May 23, 2014.

Mr. Sibasis Ghosh, learned Counsel appearing on behalf of the appellant submits that both the Courts below have committed substantial error of law in declaring the title of

the plaintiffs over the suit property on the basis of the patta by discarding the deed whereby the defendants have purchased the suit property, particularly when a patta neither can confer nor can extinguish title of a person over an immovable property and to buttress his said argument, he places reliance on the decision of Hon'ble Supreme Court in the case of **Union of India and others -vs.- Vasavi Cooperative Housing Society Limited and others** reported in **(2014) 2 SCC 269**.

Heard Mr.Ghosh. Perused the materials on record.

The plaintiffs are tracing their title over the suit property on the basis of the patta issued in favour of the predecessor-in-interest of the plaintiffs on March 12, 1977 by the State of West Bengal under Section 49(1) of the West Bengal Land Reforms Act, 1955.

The record of rights of the suit property stands in the name of the plaintiffs, entries therein signifies possession of the plaintiffs over the suit property.

The defendants are claiming title over the suit property on the basis of a deed of purchase executed subsequent to the issuance of the said patta in the year 1983 by the original owner of the suit property.

Section 49 of the said Act of 1955 prescribes procedure for settlement of vested land at the disposal of the State Government in favour of person qualified for such settlement.

The said deed cannot override the effect of the patta of such nature, particularly when the vendor of the defendants had no disposable right, title and interest over the suit property as on the date of execution of the said deed of sale in view of the vesting of the suit property in favour of the State of West Bengal.

In the facts and circumstances of the present case the decision of the Hon'ble Supreme Court relied on by Mr. Ghosh **(2014) 2 SCC 269(supra)** is misplaced. There is no dispute with regard to the proposition of law laid down in the said deed that the record of rights do not confer title. The present case is a case of acquisition of title over the suit property on the basis of a patta issued in respect of land vested to the State.

Hence, no substantial question of law as suggested by Mr. Ghosh is involved in the present Second Appeal.

S.A.T. 15 of 2021 is dismissed under XLI Rule 11 of the Code of Civil Procedure without any order as to costs.

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

(Biswajit Basu, J.)

(Soumen Sen, J.)