

Item 10. 05-07-2022 SA 291 of 2011
CAN 1 of 2011 (old CAN 894 of 2011)

^{sg} Ct. 8

Sudhir Kumar Sarkar
Versus
Bhabani Sankar Majumdar

(Through Video Conference)

The second appeal appeared in the warning list on 22nd June, 2022 and continued to appear in the list until it was transferred to the daily cause list on 28th June, 2022.

The appellant is not represented.

This appeal is arising out of a judgment and decree passed by the learned Additional District Judge, 1st Court, Nadia, Krishnagar in Title Appeal No. 4 of 2006 setting aside the judgment and decree dated 29th November, 2005 passed by the learned Civil Judge (Junior Division), 1st Court, Krishnagar, Nadia in Title Suit No. 105 of 2003.

We have gone through the order passed by the learned Trial Judge as well as the First Appellate Court. The plaintiff filed a suit for declaration of title and permanent injunction. The learned trial judge decreed the suit on the basis of the interpretation of exhibit-E. The learned Trial Judge was of the view that although the defendant argued that the plaintiff and the defendant have no right, title and interest over the suit property because before selling 5 decimals of land to the defendant in the year 1981 the plaintiff sold his entire 16 1/3rd decimals land to Biswanath Mondal by Sale Deed No. 7021 dated 10th December, 1980 (Ext.-E). But it is found from Exhibit E that said Biswanath Mondal

purchased 16 1/3rd decimals land out of 50 decimal land from one Sukumar Mondal by registered Deed No. 4585 dated 12th September, 1965. It has not been mentioned in Exhibit E how Sukumar Mondal got that property. On the contrary, Kshudubala Dasi sold 49 decimals land of plot no. 4244 in the year 1060 to Fatik Sarkar, Manohar Sarkar and Sahodeb Bala. If Kshudubala Dasi sold 49 decimal land in 1960, subsequently, in the year 1980 no property of suit plot can be transferred. The trial court was of the view that the defendant could not lead any evidence in details as to how he obtained the suit property from Sukumar Mondal and Biswanath Mondal. The Appellate Court is of the view that Exhibit-E, being sale deed no. 7021 dated 10th December, 1980 was brought on record in the additional written statement filed by the defendant on 18th September, 2001. The transfer of 16 1/3 decimals land by Sudhir Sarkar to Biswanath Mondal and Rabindra Nath Mondal was on record and form part of the pleading which was echoed by the learned trial judge as the learned trial judge did not refer to the amendment order no. 43 dated 18th September, 2001, whereby by way of additional written statement the said deed was disclosed and subsequently exhibited. The position that emerged following the disclosure of the said document and the relevant pleadings and evidence on record is that originally the owner of the land in question was Kshudubala Dasi. It was also admitted that the dag number of the said land as 4244. Exhibits 2, 3, 5 and 8 are the sale deeds produced by the plaintiff to prove the transfer of the land in question from Kshudubala Dasi to different persons. The plaintiff became the owner of 16 1/3 decimals of land by exhibit 8. All those deeds

show dag number of the transferred land as 4244. The later deed bearing no. 8195 exhibit 9 executed on 22nd December, 1989 shows the dag number of the schedule land as 4244/11660. The plaintiff claimed that he purchased 9 decimals of land by that deed from Kshudubala Dasi. Hence, it is clear that “bata no. 4244/11660” was assigned later on. It is admitted that the bata number was assigned later on and this does not prove that the schedule property of exhibit E is different from the suit property. Exhibit E was executed on 10th December, 1990. It shows dag number of the schedule property as 4244. Exhibit A relied upon by the plaintiff was executed at a later stage on 23rd February, 1981 and this document shows dag number of the schedule property as 4244/11660. In the same deed it has also been mentioned that 4244/11660 comes from original dag no. 4244 (sabek). After close examination of the documents produced the trial court arrived at a finding that the dag no. 4244/11660 of the suit property originally comes from date no. 4244 of the same khatian. The case of the plaintiff depends on the question of transfer of 5 decimals of land to the defendant. It is evident that exhibit 8 was executed at a later date after execution of exhibit E. Accordingly the question of transfer of title in respect of 5 decimals of land to the defendant does not arise. After transfer of title in respect of 16 1/3 decimals of land in dag no. 4244 the plaintiff had no right, title and interest in the said land and as such no title was passed to the defendant by exhibit E.

The Appellate Court on the basis of the evidence on record arrived at a finding that since none of the parties has any right, title or interest over the said 5 decimals of land, question of

permanent injunction against the defendant does not arise. The plaintiff is also not entitled to get permanent injunction against the defendant. It was on the basis of which finding, the appeal was allowed by the First Appellate Court. Since there was no whisper about exhibit E in the pleadings filed by the respondent, we are of the view that it was an error apparent on the face of the record and on that score the learned Trial Judge could have decreed the suit as observed by the Appellate Court that the said documents was in existence and necessary pleadings are present and duly supported by evidence on record, we are inclined to accept the views expressed by the learned First Appellate Court. The finding of fact arrived at by the First Appellate Court not being perverted and based on evidence, we are not inclined to admit the second appeal. Moreover, there was no substantial question involved in the appeal.

The appeal is not admitted and the same is dismissed along with CAN 1 of 2011 (old CAN 894 of 2011).

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)