

SA 172 of 2019
with
I.A No. CAN 1 of 2018 (Old No. 7029 of 2018)

Bimal Ghosh & Ors.
Vs.
Ajit Ghosh & Ors.

Mr. Debasish Roy
Mr. Bidyut Baran Biswas
... For the Appellants

The second appeal is arising out of first appellate court's judgement and decree dated 26th March, 2018 by affirming the judgement and decree dated 29th July, 2015 passed by the learned Civil Judge (Junior Division), 1st Court at Krishnagar, Nadia in Title Suit No. 107 of 2010. The decree was passed in the said suit by directing the defendants to quit and vacate the suit property and deliver its khas possession to the plaintiffs within 60 days from the date of decree, failing which the plaintiffs shall be at liberty to execute the same by due process of law.

The suit property being 17 decimals of land mentioned in the schedule of the plaint was originally belonged to one Batakrishna Ghosh and his name was duly recorded in C.S but during the R.S operation the suit property was erroneously recorded in the name of Bhiku Ghosh, who was the predecessor-in-interest of the defendants in respect of the suit property as well as the non-suit property i.e. 9 decimals of land in plot no. 263/338. Batakrishna Ghosh had previously filed a title suit being T.S No. 62 of 1963 on 7th February, 1963 against Bhiku Ghosh for a declaration of 16 anna title over the suit property and for a further declaration that

R.S.R.O.R was wrongly recorded in the name of Bhiku Ghosh. The said suit being T.S 62 of 1963 was transferred to the Additional Court of the learned Civil Judge (Junior Division), Krishnagar and the same was renumbered as T.S 182 of 1965. This suit was decreed ex-parte on 30th March, 1963 with an observation that the R.S.R.O.R recorded in the name of Bhiku Ghosh as erroneous and the defendants were restrained from disturbing the peaceful possession of the plaintiffs over the suit property. The said decree was binding against Bhiku Ghosh and Pashupati Ghosh. The said decree was never challenged.

It is further stated that during the flood of 1971 the house of Bhiku Ghosh was completely destroyed and as a result he had sought for permission from Batakrishna Ghosh to reside in a portion of the suit property and out of sympathy he was allowed to reside there with a condition to vacate the same as and when required by the later. After the death of Bhiku Ghosh in the year 1986, the plaintiffs, being the legal heirs of Batakrishna Ghosh, revoked the permission given to the defendants and asked them to deliver the possession of the suit property in their favour. The defendants again sought for permission to reside over the suit property for sometime by assuring to deliver its possession to the plaintiffs as and when required by them and such permission was granted. However, in the year 2010 due to their personal requirement the defendants were asked to quit and vacate the suit property. Since the request to leave the said premises was not adhered to, the suit was filed. The defendants before the trial court denied that their possession was

permissive and tried to take shelter under the plea that the suit was ex parte and they were not aware of it and hence, the decree is not binding upon them.

On the basis of the pleadings and documents enclosed in the said proceeding, the trial court decreed the suit in favour of the plaintiffs.

It transpires from the judgment and decree of the trial court as well as the first appellate court that ownership of Batakrishna Ghosh, the predecessors-in-interest of the plaintiffs, was established at the trial upon exhibiting certified copy of the deed executed on 30th April, 1953. The said exhibit was marked without any objection. The plaintiffs all throughout contended that Batakrishna Ghosh was the original owner of the suit property and his name was recorded in the C.S record. In support of the claim certified copy of the purchased deed, namely, exhibit-5 was exhibited.

It also transpires from Exhibit-1 and Exhibit1/1 that Batakrishna Ghosh, predecessor-in-interest of the respondent nos. 1 to 6, filed T.S No. 182 of 1965 before the learned Additional Munsif, Krishnagar for declaration of his title in respect of the suit property and said suit was decreed ex parte against Bhiku Ghosh and Pasupati Ghosh on 30th March, 1966 holding that Batakrishna Ghosh has title in respect of the suit property, both Bhiku and Pasupati were restrained from interfering with the possession of Batakrishna Ghosh and the entries of R.S Khatian (Exhibit-B) were erroneous. Further, the learned Additional Munsif while confirming the title of Batakrishna Ghosh in respect of the suit property relied upon

the title deed dated 13th June, 1953, which was marked as Exhibit-5 in the learned court below. The said judgment and decree not having been challenged by Bhiku Ghosh or the present appellants, have attained finality and as such, the same is binding upon them.

There was no evidence on record suggesting acquisition of title by the predecessors-in-interest of the appellants in respect of the suit property and Exhibit-5 completely demolishes any such claim. The observation regarding erroneous entry in record of rights in Title Suit No. 182 of 1965 was never challenged. The said decree was fully implemented.

On the basis of such evidence, the concurrent findings of fact arrived at by both the courts below cannot be said to be perverse. In view of the fact that there is no substantial question of law involved for which the second appeal could be admitted.

On such consideration, we do not find any merit in the second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the appeal, the connected application for injunction under CAN 1 of 2018 (CAN 7029 of 2018) becomes infructuous and the same is also dismissed.

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

