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28-03-2022

Ct. 8

SAT 3 of 2020
CAN 1 of 2020 (old CAN 458 of 2020)

Samiran Bibi @ Samiya Begum @
Samrun Bibi @ Samrul Bibi
Versus
K. Srinivas Rao & Anr.

Mr. Piyush Chaturvedi, Adv.
Mr. Sattwik Majumder, Adv.
...for the appellant

The second appeal has come up for admission.

The second appeal is arising out of a judgment and decree dated 29th March, 2019 passed by the learned Civil Judge (Senior Division), Raghunathpur, Purulia in Title Appeal No. 45 of 2018 (previously Title Appeal No. 10 of 2018), affirming the judgment and decree passed by the learned Civil Judge (Junior Division) on 17th April, 2018 in Title Suit No. 8 of 2015.

Mr. Piyush Chaturvedi, learned Counsel appearing on behalf of the appellant submits that the second appeal is to be admitted as the findings on the title of the plaintiff were perverted and on complete mis-appreciation of the evidence.

In order to ascertain if such were the facts over which the second appeal could be admitted, we have gone through the judgments of both the Courts on the issue with regard to title and the claim of the appellant as owner by adverse possession. It appears from the judgments of both the Courts that the plaintiff, in support of his title to the suit property, produced the original registered sale deed no. 5269 dated 25th May, 1963, certified copy of RS khatian no. 362 of Mouza Palaskola, rent receipt, a letter

issued from Beko Gram Panchayar dated 26th November, 2012 and certified copies of the order sheets of pre-litigation case no.85 of 2014. The defendant as against the aforesaid documents, produced a certificate of Panchayat Pradhan issued on 27th September, 1989 and electric bill from May 2012 to 2017. In a suit for declaration of title, the plaintiff has established the title over the suit property irrespective of the witness of the defence.

In the instant case, the documents exhibited by the plaintiffs conclusively established that the plaintiffs are the owners of the property. The evidence of the defendant has not shaken any foundation laid by the plaintiffs in the pleadings supported by oral and documentary evidence. The claim for adverse possession has not been established. Mere continuous possession does not mean that the defendant has acquired any title by way of adverse possession. The defendant has failed to establish that the possession is continuous, uninterrupted and hostile and such possession is detrimental to the claim of the ownership of the plaintiff. In other words, the evidence has to be that the defendant by reason of his continuous possession has dealt with the property as if she were the owner and such threat should be open. There is nothing on record to show that the defendant would be able to establish such claim.

A civil trial has to be decided on the basis of pre-ponderance of probabilities. The person having a better title is entitled to the relief as opposed to the person who could not establish his title at all or a claim in respect of the property in question. The sale deed read with the other documents clearly establish the title of the plaintiffs over the suit property. There cannot be any doubt that

the plaintiffs have the document of possession in their favour whereas the defendant has nothing to defend herself. It is also important to note that the entry in the record of rights published in the name of the plaintiffs is an evidence of possession and such entry in the record of rights shall be presumed to be correct until it is proved by evidence to be incorrect. There was no evidence on record to show that the defendant made any attempt to correct the record of rights. The correctness of the exhibit-2 (certified copy of the RS khatian) could not be shaken by the defendant. The document of title (Exhibit-1) and the document of possession (Exhibit-2) filed by the plaintiffs supporting their case are more acceptable with regard to the title of possession by the plaintiff as opposed to a claim of the defendant by adverse possession. It is also important to note that the defendant was unable to produce any document to show that the suit property was ever belonged to Khoda Box through whom the defendant is claiming her title.

We do not find any substantial question of law for admission of the second appeal. The second appeal is not admitted and stands dismissed. The application being CAN 1 of 2020 (old CAN 458 of 2020) also stands dismissed. However, there shall be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)