

04.11.2022
SL No.22
Court No.8
(gc)

SA 32 of 2016

**Arun Chakraborty & Ors.
Vs.
Parikshit Mallick**

Mr. Soumyadeep Biswas,
...for the Appellants.

The judgment of affirmation dated 5th April, 2013 is the subject matter of challenge in the second appeal. The plaintiff filed a suit for permanent injunction. It is an undisputed fact that Nrisingha Prosad Bhattacharyya was the original owner of the property in question. The legal heirs of Nrisingha Prosad sold their respective shares in favour of the different persons who are possessing their respective lands. The appellants are also claiming their right by virtue of the deed of purchase. Therefore, as rightly pointed out by both the Courts that the appellants cannot claim that the plaintiff has no right, title and interest in respect of the suit property. The title to the property arose from the deed of purchase. The appellants also did not claim that bakery shops and other shops are not situated on the suit property. The bakery shop is being run by the plaintiff. Both the Courts on consideration of Exhibits-E,F,G,H & I, hold that those documents would indicate that the tenancy is created on such plots are all situated in the suit property of which the plaintiff is claiming his right. Exhibit-1 also clearly describes the part of the land purchased by the

plaintiff/respondent and the schedule of the plaint also contains the exact description of the land purchased by the plaintiff/respondent. The defendants have also purchased their property from the legal heirs having demarcated partitions. The learned Trial Court after considering the aforesaid materials on record held that description of the property in respect of which the plaintiff claims decree of both the documents are based on deed of sale, that is, Exhibit-1 and the same is identical with the description of the properties mentioned in the plaint and having arrived at such finding, the learned Trial Court rejected the contention of the respondent that the suit property is vague. Once the property is clearly demarcated and identifiable and the person is found to be in possession, other persons or any other person cannot disturb the possession of the plaintiff.

The learned Trial Court as well as the First Appellate Court has rightly relied upon the decision of the Hon'ble High Court reported in AIR 1973 Cal 128 which has clearly stated that the person in whose name the property stands is presumed to be the owner and the person who denies his ownership must prove it. Having regard to the fact that the title deed, namely, Exhibit-1 was proved and the said document has established that the property stands in the name of the plaintiff and the fact that the appellants did not deny the ownership of the plaintiff in respect of the suit property, the decree passed by the learned Trial Court as well as the First Appellate

Court does not call for any interference. The learned Trial Court also referred to the earlier litigation between the parties and the settlement arrived at between Shibdas Bhattacharyya and the legal heirs of Dharmadas Bhattacharyya by which they mutually partitioned the properties and on the basis thereof, all the co-sharers have settled and determined their respective shares and has demarcated the properties in such a manner that one does not overlap with the other and has proceeded on that basis. The plaintiff and the defendants have purchased the said portion of the demarcated land from the co-sharers. The description in the deed, that is, Exhibit-1, proved that after the disposal of the suit between the legal heirs of Nrisingha Prosad being T.S. 308 of 1963, all the co-sharers have amicably settled their shares and they sold whole demarcated portion of the property in favour of various persons. The plaintiff before the Trial Court has relied upon documents, namely, settlement record, tax receipts and other relevant documents showing proof of possession.

The concurrent findings of facts based on such documentary and oral evidence are not likely to be interfered with in the second appeal. Once the plaintiff was able to establish lawful possession, the plaintiff/respondent is entitled to injunction. The judgment is based on proper appreciation of evidence. There is no perversity in the finding of the learned Trial Court or by the First Appellate Court.

Under such circumstances, we do not find any reason to admit the second appeal.

The second appeal being SA 32 of 2016 stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)