

DL. September
24. 6, 2022

S.A. 355 of 2016

Sri Madhab Sarkar & ors.

Vs.

Sri Nani Gopal Sarkar & anr.

None appears on behalf of the appellants, nor any accommodation is prayed on their behalf. The present appeal was presented in the year 2014 without any effort or desire to move the appeal for admission. However, we propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The present appeal has arisen out of a judgment and decree of affirmance dated July 31, 2013 passed by the learned Additional District Judge, Fifth Court at Krishnagar, Nadia, in Title Appeal No. 79 of 2009 arising out of judgment and decree dated May 26, 2009 passed by the learned Civil Judge (Junior Division) at Tehatta, Nadia, in Title Suit No. 94 of 2006, which is a suit for declaration and permanent injunction.

We have carefully considered the judgments of both the courts below. The findings of the trial court in favour of the plaintiffs/respondents are based on exhibits 3, 4 and 6. The said documents are the original deed no. 6148 of 1981, the revisional settlement record of rights and the certified true of revisional settlement of record of right in respect of Khatian no. 5807.

Pramila Bala was the original owner of the property in suit. Pramila sold 13 decimals of land out of 27 decimals to the plaintiff/respondent no. 1 vide exhibit-3, which was presented for registration on June 16, 1981 at 1-20 p.m. The

defendants/appellants produced another document being exhibit-C that was also presented for registration on June 16, 1981 at 1-32 p.m. and claimed that they have purchased 14 decimals of land out of 27 decimals of plot no. 1894 from Pramila Bala. It appears that Pramila Bala executed two deeds in favour of two different persons.

Section 47 of the Registration Act, 1908 indicates the time from which registered documents operate. Title to described property, operates from the date of execution and may not be from the date of registration of the document concerned. However, on such registration title being passed to the purchaser from the date of execution of the sale deed, the true test is to find out the intention of the parties. Registration is prima facie, proof of an intention to transfer of the property.

In the instant case, Exbt. 3 is the deed by which the property was transferred in favour of the plaintiff. It is having the original deed no.6148 of 1981, whereas, the certified copy of the sale deed relied upon by the defendants in their favour mentioned their deed as deed no.6151 of 1981. The intention to transfer the property in favour of the plaintiff is clearly discernible by prior execution of the said document in favour of the plaintiff. It is settled law that where two instruments are executed on the same day, that which was executed first take priority.

Undisputedly, the document in favour of the plaintiff was executed prior in point of time. In Gurbax Singh v. Kartar Singh, reported in AIR 2002 SC 959 this issue was conclusively decided in paragraph 3 where it is clearly stated on interpretation of Section 47 of the Registration Act:

“It is well settled that a document on subsequent registration will take effect from the time when it was executed and

not from the time of its registration. Where two documents are executed on the same day, the time of their execution would determine the priority irrespective of the time of their registration. The one which is executed earlier in time will prevail over the other executed subsequently. The appellants have failed to prove that the sale deed was executed in their favour prior in point of time. Where none of the parties were able to adduce evidence with regard to prior execution of the instrument the date of registration would be a relevant factor. There are concurrent findings of due execution and registration of the document in favour of the plaintiff. (emphasis supplied)

The learned trial judge observed that the first deed being exhibit-3, which was presented for registration at 1-20 p.m., embossed with valid title. Accordingly, the title of the plaintiff was accepted by the trial court. Moreover, exhibit-1 would establish that the plaintiff was in possession of the suit plot but the same was not partitioned in between the co-sharers as Trigundharini transferred 14 decimals of land to Kalyan Majumder, who subsequently sold the said 14 decimals of land to Biswanath Mondal being the respondent no. 2 in this appeal. Trigunadharini was the owner of the suit plot no. 1894 having eight (8) annas share measuring 14 decimals of land out of 27 decimals and Pramila Bala was the owner of 13 decimals of land in the same plot.

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The right of the plaintiff/respondent no. 1 having been clearly acknowledged in respect of 13 decimals of land, which he purchased from Pramila Bala vide exhibit-3, we are of the view that the trial court was justified in decreeing the suit in favour of the plaintiff/respondent no. 1 to the extent of 13 decimals of land in the suit plot.

The learned judge in the first appellate court concurred with the findings of the trial court after going through the said

exhibits and on consideration of the evidence – both oral and documentary.

The concurrent findings of fact arrived at by both the courts below cannot be interfered with in the second appeal by reason of the fact that the document produced by the plaintiff/respondent no. 1 was registered in accordance with the provisions of Sections 59 and 60 of the Registration Act, 1908 as well as by the time the second deed was presented, the transferor has lost her interest in the property. Moreover, we find no substantial question of law involved in this appeal for which the same is required to be admitted.

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

There will be no order as to costs.

(Soumen Sen, J.)

(Uday Kumar, J.)