

June 23, 2022
Sl. No.66
Court No.8
s.biswas

FMA 371 of 2016
With
CAN 1 of 2014 (Old No.CAN 8751 of 2014)

Sarbani Deb
vs.
Pradip Bhattacharya and others

The appellant is not represented. Nor any accommodation is prayed for on behalf of the appellant.

The appeal is arising out of judgment and decree dated 18th June, 2014 passed by the learned Additional District and Sessions Judge, Nabadwip, Nadia in Title Appeal No.3 of 2010 by the which the judgment and decree passed by the Civil Judge (Junior Division), Nabadwip, Nadia in Title Suit No.224 of 1993 was affirmed.

In this appeal the appellant has prayed for admission of the appeal on the ground that the Trial Court as well as First Appellate Court has, on a complete misleading of the evidence on record, dismissed the suit.

It is contended that the First Appellate Court also did not consider the petition filed under Order 41 Rule 27 of the Code of Civil Procedure.

We may briefly indicate the fact of the case to see whether any substantial question of law involved in this appeal. The plaintiff claimed that 'Ka' schedule property mentioned in the plaint belonging to one Sudhangshu Sekhar Ghosh, since deceased, who was the father of the

plaintiff and the proforma defendants. Said Sudhanshu Sekhar during his life time purchased a property from one Panchanan Pramanick by a deed of sale dated 5th February, 1941 to the extent of an area of 33 cents in respect of Plot No.5497. Afterwards he also purchased another one cent of land from one Debendra Nath Chatterjee by a registered deed of sale dated 14.06.1952 and he became the owner of 34 cents of land in respect of plot no.5497 along with the other co-sharers in respect of said property.

In a suit for partition amongst the co-sharers of the plot no.5497, the Commissioner demarcated the property amongst the co-sharers and Sudhangshu Sekhar purchased a demarcated land during his life time.

The plaintiff and the proforma defendants became the owner and possessor of 16 annas share in ezmal upon the 'Ka' schedule property though the plaintiff alone reside in the said property and the proforma defendants are residing in other places.

To reach 'Ka' schedule proerty the plaintiff and the proforma defendants have a personal passage which has been described in the 'Kha' schedule property in the plaint and by using the said passage they reach the Municipapal Road.

'Kha' schedue property is approximately 40 hands at length and 14 hands at breadth. There is a gate of the plaintiff's house which is facing west and the said gate is

installed upon the 'Kha' schedule property. There is a land at the northern side of the 'Kha' schedule property measuring about 1 katha and the said land along with the gate is the part and parcel of the 'Kha' schedule property and the said land measuring 1 katha is described in the plaint at 'Kha-1' schedule property and the said land has been recorded as shown in the partition map as well as settlement map.

The plaintiff alleged that the defendant on 13th July, 1993 purchased 'Ga' schedule property and became the owner and possessor of the said property and the defendant is residing in the 'Ga' schedule property.

The defendant in the month of February, 2003 constructed a vat in the property of the plaintiff taking the advantage of absence of the plaintiff due to her daughter's marriage and at the time of construction of the vat the defendant had violated the injunction order passed in the suit on the basis of interlocutory application. The defendant also had placed a cement slab in front of vat and covered it with soil.

The plaintiff filed a suit for removal of the said unauthorized construction and obstruction caused by the defendant as the defendant tried to use the 'Kha-1' schedule property as a storage of his construction materials.

The defendant in the written statement has stated that the defendant is in possession of 1 katha land and it

is purchased by him as would be evident from the documents he has disclosed.

Both the parties adduced oral and documentary evidence. In order to ascertain whether the 'Kha-1' schedule property is the part of 'Kha' schedule property, the Trial Court has relied upon the evidence of P.W.2 and Exhibit 4. Learned Trial has noticed that in the earlier proceeding on the basis of which final decree was drawn up, did not measure the passage which is the subject matter of challenge in this proceeding. PW1 in her evidence has stated that 'Ka' schedule property was purchased in the year 1952, this is corroborated by Ext.4. The area is 1 cent. But on actual measurement it is found that the 'Ka' and 'Kha-1' schedule property is 1 cent. The First Appellate Court has in fact relied upon one certified copy of R.S.R.O.R. wherever it appears that 5497/12147 is the road which is used by the owner of Dage No. 5497/11687. This document itself shows that Dag No. 5497/12147 is not the property of plaintiff. The plaintiff however claimed right in respect of Dag No. 5497/12147 on the ground that her predecessor-in-interest was the owner of plot no.5497.

Thus, the concurrent findings of facts fails from oral and documentary evidence and cannot be said to be perverse.

There is no substantial question of law involved in the case.

The Second Appeal is dismissed.

In view of the dismissal of the appeal itself, the connected application stands dismissed.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)