

SA 63 of 2021

Ct-08

**Sri Chittaranjan Rudra
Vs.
Sri Niranjana Rudra & Ors.**

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The appellant is not represented, nor any accommodation is prayed on his behalf.

In terms of the order dated 27th January, 2022 a report has been filed by the Assistant Registrar-XVI dated 17th May, 2022.

The report filed by the Assistant Registrar-XVI dated 17th May, 2022 shall be placed in the administrative side.

The appeal was presented in the year 2002. Thereafter, it was registered as SA 63 2021.

The appeal initially appeared in the list on 27th January 2022, but the matter was released by a coordinate bench due to lack of determination.

Thereafter, this matter appeared on 9th September, 2022 and is appearing in the list since then. It seems that the appellant has due notice of the matter. We, however, propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmation dated September 28, 2001 passed by the learned Civil Judge, Senior Division, 1st Additional Court, Burdwan, in Title Appeal No. 74 of 2001 arising out of judgment and decree dated April 16, 2001 passed by the learned Civil Judge(Junior Division), 1st Court, Burdwan,in Title Suit No. 58 of 1998 is the subject matter of challenge in this appeal.

The plaintiff/appellant filed a suit for declaration of title and permanent injunction. The

plaintiff claimed that the suit property described in schedule 'Ka' and 'Kha' are owned and possessed by the plaintiff. The plaintiff stated that 'Ka' was initially mortgaged to the father of the plaintiff and due to failure on the part of the mortgagor to redeem the mortgage the property was sold to the father of the plaintiff on 30.6.1939. The father of the plaintiff purchased the property for the benefit of the minor. 'Kha' schedule property was purchased by the father of the plaintiff from one Nirmala Dasi by registered sale deed dated 11.06.1940 for the benefit of the plaintiff. The plaintiff when was minor used to possess and cultivate 'Ka' and 'Kha' schedule properties along with his brother and kept the income of the said properties with her mother.

It is alleged that the plaintiff out of the said income purchased 'Ga' schedule property from one Ratikanta Shyam by registered sale deed dated 30.4.1953 and has been possessing the same since purchase. It is stated that the plaintiff purchased certain properties in the name of and for the benefit of his youngest son, the defendant no. 1 herein and during his minority income of the said properties used to be kept with mother of the plaintiff. Since after attaining majority the defendant no. 1 was possessing the said properties and got his name recorded in the R.S.R.O.R.

The plaintiff alleged that the defendant no. 1 with ulterior motive got about 1½ bighas of land out of 20 bighas purchased in his name recorded in the name of plaintiff, which the plaintiff got to know on 25.7.1998. On attaining majority the father of the plaintiff handed over the deed of purchase in his name with a direction to cultivate the suit properties and also handed over Rs.10,000/-

towards income from the suit property and since then the plaintiff has been possessing the suit properties in his own right. The plaintiff and his father being less educated and the plaintiff's father being old, the defendant no. 1 was entrusted for recording the name in R.O.R, as the defendant no. 1 was more educated and the defendant no. 1, betraying the trust, got the suit properties recorded in the R.S.R.O.R in the name of plaintiff and the defendant no. 1 in 8 annas share each. The plaintiff had no knowledge about the same till 1984.

Upon enquiry the plaintiff came to know about erroneous R.S and L.R.R.O.R and in view thereof, the plaintiff claimed declaration that the plaintiff is the true owner of the land in question. For the said reason, the plaintiff filed Title Suit No. 108 of 1984 before the trial Court with an objection under Section 51A(4) of West Bengal Land Reforms Act, which was dismissed. The plaintiff during the pendency of the suit stated that the documents related to the appeal could not be traced and ultimately, he withdrawn the Title Suit No. 108 of 1984 on the assurance of some local people.

The plaintiff alleged that the suit was withdrawn on good faith and the defendant no. 1 taking advantage of that denied plaintiff's title over the suit properties on and from 25.7.1998 and to dispossess the plaintiff from the suit properties, hence the suit.

The defendant no. 1 contested the suit by filing written statement denying the case put forward in the plaint.

The Trial Court dismissed the suit in observing that the suit property was purchased by the father of the plaintiff for his own benefit. The Trial Court

also observed that the suit property was not purchased for the benefit of the plaintiff and the entries in R.S.R.O.R were correct and, as such the plaintiff was not the absolute owner in respect of the suit property. This decree was challenged in the appeal.

The first appellate court in affirming the said decree passed by the trial court observed that the payment of consideration, motive and in whose interest and benefit the property was purchased are the main ingredients in this suit to come into conclusion as to whether the property was purchased by the father of the plaintiff and the defendant for the benefit and interest of his family. Admittedly, the plaintiff and the defendant were minors at the time when the suit property described in schedule 'ka' and 'Kha' of the plaint were purchased. The positive case of plaintiff is that the father of the plaintiff had been in possession of the suit properties on behalf of the plaintiff and the father of the plaintiff used to keep the income of the suit properties to the mother of the plaintiff. But the said income from the suit property described in schedule 'ka' and 'Kha' of the plaint, the plaintiff purchased the suit property described in schedule 'Ga' of the plaint. However, the plaintiff could not produce any paper or document showing that the income of the suit property described in schedule 'ka' and 'Kha' were kept in the custody of the mother of the plaintiff, even no corroborative oral evidence was forthcoming in this regard. It was also not proved that the suit property described in schedule 'Ga' was purchased out of the income generated from the suit property described in schedule 'ka' and 'Kha' of the plaint.

It is also clear from the pleadings and the evidence that the plaintiff and the defendant no. 1 both were minors at the time of R.S operation and therefore, the question of being entrusted upon the defendant no. 1 by the plaintiff for recording the name in R.S.R.O.R could not be believed and at the relevant point of time, the father of the plaintiff was also alive. There was strong presumption that the father of the plaintiff may have taken all necessary steps for recording entry in the R.S in connection with the suit property. R.S record clearly indicates that the names of the plaintiff and the defendant no. 1 have been recorded in respect of the suit property in equal shares.

Based on such consideration supported by the evidence, both oral and documentary and the view taken by the trial court as well as the first appellate court on such evidence, does not appear to be perverse.

In view thereof, 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.

(Uday Kumar ,J.)

(Soumen Sen, J.)

