

Court No. 8

SA 177 of 2012

05.07.2022

(AD 11)

(S. Banerjee)

Seikh Mahimuddin & Ors.

Vs.

Seikh Ainuddin & Ors.

with

CAN 1 of 2012

(Old CAN 1696 of 2012)

The second appeal appeared in the warning list on 22nd June, 2022 and continued to appear in the list until it was transferred to the daily cause list on 28th June, 2022.

The appellants are not present.

The appellants have preferred this appeal in the year 2012 and kept it pending without any intention to move the appeal for admission. The Second Appeal is arising out of a judgement and decree of affirmation passed by the learned Additional District Judge, Arambagh in Title Appeal no. 15 of 2009 affirming the decree dated 6th March, 2009 passed by the learned Civil Judge (Jr. Division), 1st Court, Arambagh in Title Suit No. 2 of 2007.

The plaintiffs filed a suit for declaration of title and consequential reliefs of permanent injunction. The learned trial court dismissed the suit on contest.

The plaintiffs claimed to be the owner of a property mentioned in schedule 'Ka' of the plaint by virtue of a registered deed of conveyance no. 408 executed in the year 1983 of Khanakul Sub-Registration office and by virtue of a registered deed of exchange bearing no. 6521 of the year 1977 registered at the said Khanakul Registry office and since the date of purchase they are in exclusive possession. The defendants are their own brothers having no right title and interest or having possession in respect of the suit property or any portion thereof. After purchase the plaintiff no. 1 duly recorded his name in the land record as would be evident from the finally published LRROR. It is claimed that out of the 17 decimal of land purchased the plaintiff no. 1 on an application being made before the SDL & LRO, Arambagh he had obtained conversion of 10 decimals of land for construction of his residential building thereby keeping 7 decimal as adjoining vacant land. The plaintiff thereafter had started making construction upon this converted 10 decimal of land mentioned in schedule 'Ka-1', the defendants started obstructing such construction and exerted pressure upon the plaintiff no. 1 to transfer a part of the Ka scheduled property of the plaint in favour of the defendant.

This has resulted in the suit being filed by the plaintiff.

The defendants contested the suit.

The defendants contended that the defendant nos. 1 to 3 and the plaintiff no. 1 are brothers and the plaintiff no. 1 is the eldest one and in absence of their father the plaintiff no. 1 used to look after the joint properties left by their father. The plaintiff no. 1 used to purchase properties and manage all the properties acquired out of the joint family fund. The plaintiff no. 1 and the defendant nos. 1 to 3 and the father of the defendant no. 4, (who was also one of the brothers of the said plaintiff no. 1) and defendant nos. 1 to 3 used to deposit their earnings and incomes to the plaintiff no. 1 for maintenance of the joint mess. In the year 1384. B.S. the father of the parties entrusted the plaintiff no. 1 being the eldest son to prepare an exchange deed for the said Ka-1 schedule property of the plaintiff and had given the requisite amount for preparation of the exchange deed to him. In the year 1389 B.S. the father of the plaintiff no. 1 and his brothers gave money to the plaintiff no. 1 for purchasing the balance 7 decimal in the suit plot from Mainuddin Chowdhry and in both the cases the father of the parties directed the plaintiff no. 1 to purchase and to make exchange in the names of all the brothers but the plaintiff no. 1 fraudulently prepared both the deeds in his own name alone. Accordingly the defendants have submitted that both the deeds of purchase and deed of exchange are

fraudulent, collusive, illegal and void and the defendants have prayed for dismissal of the suit.

On the basis of the pleadings, the learned trial judge raised five issues and both the parties exhibited documents in respect of their respective cases. The learned trial judge as well as the appellate court found that the plaintiffs were able to establish their title in respect of the suit property to which we also express our concurrence but unfortunately the plaintiffs did not claim any relief for recovery of possession as they were found to be out of possession. Since the declaration of title by itself would not have given a complete relief to the plaintiffs without a prayer for recovery of possession the plaint was dismissed and it was affirmed by the appeal court.

This being the settled position in law, we do not find any reason to interfere with the findings arrived at by both the courts below.

The second appeal, accordingly, fails and is not admitted.

(Soumen Sen, J.)

(Siddhartha Roy Chowdhury, J.)