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SB 17.06.2022
Ct. No. 8

S.A.T. 32 of 2022
CAN 1 of 2022

Smt. Baisakhi Kayal & Ors.
Vs.
Sri Indranil Roy & Ors.

Mr. Asit Das
Mr. Partha Pratim Roy
Ms. Malyasree Maity For the Appellants

Mr. Probal Mukherjee, Sr. Adv.
Mr. Debanik Banerjee
Mr. Steven S. Biswas For the Respondent No. 1/Contemnor

The second appeal has come up for admission. The second appeal can be admitted only if involves a substantial question of law as opposed to mere error of law. The appellant has to overcome insurmountable difficulties in creating a prima facie opinion in the mind of the appeal Court, at the time of admission to admit the appeal disregarding and / or ignoring concurrent findings of fact on the ground of perversity. The test to be applied by the Appellate Court in admitting a second appeal on the question of law in spite of concurrent findings of facts stand on a higher pedestal than the kind of exercise a First Appellate Court is required to do in admitting a first appeal on perversity. More than one filtered process on the facts and evidence having undergone before a second appeal comes up for consideration makes it all the more difficult for the appellant to dislodge such findings unless it is established to be demonstrably perverse on the face of it or that no reasonable person conversant with the law of facts on the given sets of facts and circumstances could have arrived at such a finding. These are merely

illustrations of some of the criteria which the appellate Court is required to exercise in admitting the second appeal. Both the Courts below have on appreciation of the evidence on record and more particularly on an earlier finding of a learned Single Judge of this Court, Justice Ajoy Nath Ray as His Lordship then was, refused to accept the contention of the appellant to be the co-owner of the property in question on the basis of an allotment, alleged to have been made in favour of the mother of the appellant sometimes in the year 1948. The appellant in 1950 was 12 years of age and it is not a plausible narrative that he took initiative to get the name of the Pramatha recorded in the Register maintained by the Colony Committee or in the R.R.R. department, Government of West Bengal. Mother of the appellant admittedly came to India in 1950, therefore, the Exhibit C & D, the Refugee Cards dated 10.07.1948 cannot be said to have been lending support to the case of appellant. Parents of appellant used to stay at Tufangunj. The case made out by the plaintiff that the appellant was accommodated in his house as he was pursuing his study in Calcutta in a more acceptable version than what is sought to be put by the appellant either before the Trial Court or before the First Appellate Court.

Mr. Roy has placed strong reliance on an order dated 11.03.1988 passed in Title Appeal No. 446 of 1984 that was marked as Exhibit-36 to show that in a previously instituted suit between the parties, the First Appellate Court has observed as follows;

“Admittedly the suit plot no. 1/10 Vidyasagar Colony Calcutta-47, is possessed by Plaintiff and Defendant no. 2 in

equal shares.”

The subject matter of that suit was the right of the parties to install electricity meter in the suit plot. Mr. Roy's client alleged that being the owner of the property he should have been given the right to install electricity connection which is being opposed by the plaintiff. There was no discussion in the order at all with regard to the ownership of the property by either of the parties or the question of better title. Possessory right was taken as the basis for deciding the issue as who would get the electricity connection. It is elementary that even a trespassers unless evicted by issue process of law would be entitled to electricity connection this has been recognized by the full Bench of our Court in the case of **Abhimanyu Majumdar & Ors. vs. The Superintending Engineer & Ors reported in (2011) 2 CHN 768.**

As opposed to the said finding at a much later dated 6th August, 1999, Justice Ray, arrived at a clear finding with regard to the right, title and interest of Pramatha in respect of the land in question. The relevant finding of Justice Ray is as follows;

“Sukumar is a permanent resident of Toofanganj Cooch Behar, at least at present. His brother Sukhamoy Pal occupies a portion of enumeration plot no. E 71.

I am not concerned as to whether Sukumar / Sukhamoy can continue to occupy that portion notwithstanding the objection of the writ petitioner and the other heirs of Pramatha such objection to such occupation might form the subject matter of a title suit but the subject matter here is the impugned government order of bye-

numbering seeking to evict Jasadha's right as heir to the sole allottee being her deceased husband.

Although not stated in the pleadings, it appears that decades after Pramatha's allotment was given and obtained, something was written by Sukumar for survey of the Enumeration Plot and at the survey, the writ petitioner and her family did not turn up ; as a result thereof, the impugned order was issued seeking to make re-allotment in 1989 of a plot which had been allotted to a single person 39 years prior thereto.

Absolutely no reason is apparent why the largest part of the plot should be re-allotted to Nihar Pal, who happens to have been the same surname as Sukumar Pal but is in no manner connected with him. She is not a party and she has not sought to intervene. She is a resident of an adjacent plot but not the possessor either in part or whole of the Enumeration Plot No. E 71.

The documents of title were not given after 1950 to Pramatha or his heirs but the possession of Pramatha from 1950 was uninterrupted and undisputed. The period of prescription even as against the Government was over after 1980. Several years thereafter it was not open by way of a Government order to cast any doubt upon the right of Pramatha or his legal heirs and legal representatives to have absolute right and title to the plot allotted in 1950." (emphasis supplied)

The legal heirs of Pramatha has been substituted. Both Trial Court as well as the First Appellate Court has considered amongst others the findings of Justice Ray with

regard to right, title and interest of the property in question on the basis of same sets of facts and evidence that was led before His Lordship. The said findings has remained unshaken as no contrary evidence was produced before the Trial Court to dislodge or shaken the finding arrived at Justice Ray. Both the Courts have elaborately dealt with the evidence led by the parties claiming their respective right, title and interest. The plaintiffs undoubtedly as would reveal from the brief narration of facts stated above has a better title and in such facts and circumstances we feel that both the Trial Court as well as the Appellate Court has in correctly relying upon the decision in the case of Goutam Kumar Maity Vs. Bimal kumar Maity & Ors. being case no. S.A. 502 of 2009 with C.A.N. 953 of 2010 in order dated 25.02.2010 has returned a finding in favour of the plaintiff.

In Goutam Kumar Maity (supra) it was held:

“Once, title of the plaintiffs in the property has been proved, it is for the defendant to show that such title has been extinguished by adverse possession or that no title at all accrued in favour of the plaintiffs. The plaintiffs are, therefore, entitled to get a decree for eviction simply on the basis of their title”. Thus the point no. 2 is also answered negative.”

The concurrent findings of facts cannot be said to be perverse or that no reasonable person conversant with law could not have arrived at such a finding on the basis of material-on-record.

On such consideration, we do not find any substantial question of law involved in this appeal.

The Second Appeal being SAT 32 of 2022 with

connected application being CAN 1 of 2022 are, accordingly, dismissed at the admission stage.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)