

**Kamalabala Dasi
Vs.
Swapan Kora**

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The appeal appeared in the warning list on 16th November, 2022. Thereafter transferred to the regular list on 21st November, 2022 and since then the matter is appearing in the list. The appellant is deemed to have knowledge of the matter, in spite of thereof, the appellant is not represented.

The stamp reporter in his report dated 19th March, 2016 has reported that the appeal was presented insufficient court fees. Till date no attempt was made to put in the deficit court fees or to remove the defects.

The appellate judgment and decree dated 29th September, 2015 passed by learned Civil Judge (Senior Division), Suri, Birbhum in Title Appeal No. 16 of 2015 affirming the judgment and decree dated 30th April, 2015 passed by learned Civil Judge (Junior Division), Dubrajpur, Birbhum in Title Suit No. 58 of 2003 is the subject matter of challenge in this second appeal.

Although, we could have dismissed the appeal for not putting the deficit court fees or to remove the defects, however, we propose to find out if any substantial question of law(s) is involved in this second appeal.

The plaintiff filed the suit for declaration, title, permanent injunction and recovery of khas possession.

The plaintiff's case in short is that the suit property under Mouza-Boskanda, J.L No. 56, R.S

Khatian no. 165, L.R Khatian No. 21, Dag No. 752, 796,794 and 799 measuring total 13 decimals previously recorded in the name of Gour Das, the father of the plaintiff in R.S.R.O.R and thereafter the same was recorded in the name of the plaintiff. The said Gour Das on 30/12/1955 gifted the suit property to the plaintiff and since then the plaintiff is in possession of the same and on the basis of her possession the LRROR was prepared in her name. It is also claimed by the plaintiff that she is cultivating the suit property along with his son. It is further claimed by the plaintiff that the defendant is a stranger and he threatened the plaintiff on 14/04/2003 to dispossess her off from the suit property. The plaintiff made an amendment to the present plaint by which she inserted a paragraph being No.3(Ka) where she claimed that on 18th Srabon, 1410 Bengali Calendar year, the defendant with the help of some local people dispossessed the plaintiff from the suit property. This is the main reason for filing the instant suit.

The defendant filed written statement and additional written statement denying all the allegations of the plaintiff. The defendant claimed that he is a Bargader under the present plaintiff cultivating the suit property for last four years. It is also claimed by him that the plaintiff has been in constructive possession of the suit property. Furthermore, he also disclosed that one Shyamapada Kunai was the previous Bargadar of the suit property and after the relinquishment of his barga right, the present defendant became the Bargadar of the suit property under the plaintiff by giving share of

produce to her. However, relation between the plaintiff and defendant was good, the plaintiff usually did not issue any receipt against the said share of produce. It is also claimed by the defendant that he made an application before the B.L & L.R.O for recording his name as Bargadar and when he claimed the receipt from the plaintiff in the previous year, the plaintiff illegally denied the defendant's right upon the suit property. It is further claimed by the defendant that a water reservoir was being constructed by the Bacreswar Thermal Power Station on the suit property and for that reason Government has directed not to record any new Bargadar's name in respect of that property for which the name of the defendant was not recorded as Bargadar in respect of the suit property. The defendant has accordingly prayed for dismissal of the instant suit.

During trial the plaintiff proved her ownership by producing registered deed of gift dated 30.12.1955. She also claimed that the property was previously recorded in her father's name in RSROR under Khatian No. 165. She has also filed Exhibit-3 document and she further claimed that the property was recorded in her name in LRROR under Khatian No. 21, She filed Exhibit-3(a) in support of her claim. From both the two documents it reveals that the plaintiff's claim is justified. Moreover, the defendant in his written statement admitted the ownership of the plaintiff in respect of the suit property and D.W 1 in his cross-examination also corroborated the claim of the plaintiff. Therefore, it is clear that there is no question relating to the ownership of the suit property in

the present case specifically where the defendant admitted the plaintiff's ownership and documents also supported that claim.

P.W 1 in his examination-in-chief stated that the plaintiff is in possession of the suit property by cultivating the same through her son which fact, however, is denied by the defendant.

The case of the plaintiff is corroborated by the evidence of P.W 1 and P.W 3. The evidence of both the witnesses with regard to the possession could not be demolished during cross-examination. The question is as to whether the defendant is a Bargadar was decided previously in Title Suit No. 58 of 2003. In the said suit it was found that one Misc. case under Section 21 of WBLR Act was filed by the petitioner before the appropriate authority i.e. the B.L & L.R.O and the B.L & L.R.O on 15.9.2004 sent a report stating that the defendant is not a Bargadar. Thereafter, the defendant preferred an appeal under Section 19 of WBLR Act before D.L & L.R.O against the aforesaid order of B.L & L.R.O. Learned D.L & L.R.O remanded the matter back to the B.L & L.R.O for reexamining the matter in dispute. Thereafter, the learned B.L & L.R.O submitted a report on 14.11.2006 stating that the defendant is a Bargadar in respect of the suit property since 1405 B.S. On the basis of the said report the trial court decided the aforesaid suit.

The learned Additional District Judge, Suri, remanded back the matter by setting aside the previous judgment of this court with a direction to rehear the matter and to decide the suit on the basis of observations made by the first appellate court in the judgment in respect of Title Appeal

No. 11 of 2009.

The learned Additional District Judge, Suri, in the judgment relating to the Title Appeal No. 11 of 2009 arrived at a finding that although as per learned B.L & L.R.O report the defendant is a Bargadar, but the defendant had not produced any document showing that he is Bargadar under the plaintiff in respect of the suit property. After receiving back the original record, the date was fixed for adducing further evidence by both the sides. But the plaintiff and the defendant did not submit document/adduce oral evidence. The defendant had only filed Exhibit-A document, which is the certified copy of L.R.R.O.R of Khatian No. 21, Mouza-Boskanda, from where it is clear that the suit property was recorded in the name of the defendant as Bargadar under the plaintiff in LRROR.

Learned Trial Judge rejected the submission made on behalf of the plaintiff that the B.L & L.R.O did not follow proper procedure which is required to be followed on the ground that the provision under Section 21(4) of the WBLR Act needs to be followed. The Civil Court may not have any jurisdiction to entertain such objection against the order of B.L & L.R.O. Learned Trial Judge relying upon Exhibit-A held that the defendant is the Bargadar in respect of the suit property and the plaintiff is the owner of the suit property.

The first appellate court dismissed the appeal. The first appellate court has relied upon the decision of our court in the case of ***Chapala Bala Vs. Manoranjan, reported in (1975)2 Cal LJ 447*** wherein the Hon'ble Court while affirming a decision of a trial court, which had

decreed the suit in part declaring only the plaintiff's title to the suit land and disallowing the other relief, clearly observed that in view of the amendment of sub-section(2) of Section 18 by the W.B.L.R (amendment) Act, 1974, the officer or authority mentioned in sub-section (1) of Section 18 has become the sole authority to decide the question whether a person is a 'bargadar' or not and the Civil Court has no jurisdiction to ignore the report of the concerned authority, in pursuance of Section 21(3) of the Act and has to decide the case on the basis of the said report.

The first appellate court, in our view, has rightly distinguished the decision reported in ***AIR 1997(CAL) 151 (Smt. Sari Mahanti Vs. Ghauram Mahat)***.

On such consideration, we do not find any reason to interfere with the order passed by the first appellate court and we are of the view that the appeal does not involve any substantial question of law.

The appeal accordingly fails.

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

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

