

Item-33. 19-09-2022

sg

Ct. 8

SA 38 of 2022

Ratan Kumar Goswami & Ors.
Versus
Mohadeb Sarkar & Ors.

In view of our earlier order dated 15th September, 2022, we propose to consider the question of admission of the second appeal in absence of the appellants. We put it on record that the appellants, in spite of notice, did not appear earlier. The appellants are not also represented today.

We have considered the judgment and order of the First Appellate Court dated 18th December, 1997 affirming the judgment of the trial court dated 20th November, 1996 in a suit for declaration of title and for permanent injunction dated.

The trial court decreed the suit on contest by declaring the title of the plaintiffs in respect of Ga scheduled property. The said finding is based on oral and documentary evidence adduced by the plaintiffs and on consideration of the defence by the defendants. It emerges during evidence that the plaintiff, Gourishankar Sarkar, since deceased, purchased the Ka scheduled property from four persons who inherited the same from their father Kshudiram Mukherjee by virtue of a registered Kobala dated 26th September, 1971 (marked Exbt.1). The original plaintiff acquired right, title and interest in the Ka scheduled property by Exhibit-1. Kshudiram Mukherjee was the original owner of the Ka scheduled property and both C.S.R.O.R. and R.S.R,O.R. were prepared in his name and on his demise his four sons namely Shiva Prasad, Shyama Prasad, Deva Prasade and Satya Prasad inherited the same in

equal share and thereafter they sold the Ka scheduled property to the original plaintiff Gouri Shankar Sarkar by a deed of sale (Ext.1) and thus he acquired title in the Ka schedule property and on his demise during pendency of this suit the substituted plaintiffs as his legal heirs have become owners of the Ka schedule property in equal share. Since it is admitted that GA schedule is part of the Ka schedule, the substituted plaintiffs have title in the GA schedule property. The pro-defendant no.3, now deceased, had no title in the Ga schedule property and he had no right to transfer the Ga schedule property. The defendants 1 and 2 did not acquire any right, title and interest in the Ga schedule property by virtue of registered kobala dated 9.11.75 executed by the pro-defendant no.3 (Ext. A1).

It was on the aforesaid basis, the suit was decreed in favour of the plaintiffs. The First Appellate Court, on consideration of the relevant exhibits and the oral and other documentary evidence, affirmed the order of the trial court. In concurring with the said finding, the first appellate court has relied upon the CS khatian no. 250/1 (Ext. 3) and the RS khatian no. 2500/1 (Ext.2). It appears from the exhibit 3 that Kshudiram Mukherjee was recorded in the 13th Col. of C.S. record as owner of the suit plot no. 1090 and the names of Surendra Nath, Indra Narayan and Nabin Kumari were mentioned as licensees under Kshudiram. From exhibit 2 it is clear that Kshudiram Mukherjee was recorded as owner and Surendra Nath and the pro-defendant no.3 were recorded as licensees under him in respect of the suit plot in the 13th Col. of the R.S. record. The plaintiffs have relied on the C.S. and R.S. records. Their case is that both C.S. and R.S. records were duly

prepared. The defendants have challenged both the C.S.R.O.R. and R.S.R.O.R.

It is settled law that R.O.R. is not a document of title. But the R.O.R. raises a presumption of title. The entry in the R.O.R. will be presumed to be correct unless rebutted by cogent and convincing evidence. Further the party relying on the correctness of the entry in R.O.R. is not required to prove the correctness. On the contrary, the party challenging the same has to prove that entries in R.O.R. are erroneous.

Therefore, the burden of proof rests upon the defendants to prove that both C.S. and R.S. records are erroneous by adducing cogent and convincing evidence.

The aforesaid evidences clearly establish that Kshudiram was the owner of the Ka schedule property and that Surendra and Indra were not the original owners of the same. The plaintiff is the son of Surendra and pro-defendant no.3 is the son of Indra. Kshudiram died leaving behind his four sons, namely, Shiba Prasad, Shyama Prasad, Debi Prasad and Satya Prasad. It is not in dispute that Kha and Ga schedule properties are part of and included in the Ka scheduled property. Since Surendra and Indra were not the owners of Ka schedule property, the plaintiff as legal heir of Surendra and pro-defendant no.3 as legal heir of Indra had no right to inherit the Ka schedule property. The evidence on record clearly established that the possession of Surendra, Indra and their sister Nabin Kumari are in possession over the Ka schedule property under permission and entries in both the CS and RS records regarding that are correct. Based on such findings, the appellate court confirmed the decree of the trial court.

We do not find any substantial question of law involved in this appeal. There cannot be any dispute that CS and RS records go to show that Kshudiram Mukherjee was the owner of the property while Surendra and Indra and their sister were the licensees. The evidences of the defendants were insufficient to prove that the entries of the records of right are incorrect.

In view of such concurrent findings based on evidence, we are not inclined to admit the second appeal.

The second appeal stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)