

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Soumen Sen

&

The Hon'ble Justice Ajoy Kumar Mukherjee

S.A. 62 of 2021

Golam Nabi

Vs.

Ayub Molla

Order dated: 07th March, 2022

Ajoy Kumar Mukherjee, J. (oral):

1. The appellant is not represented, nor any accommodation is prayed for. On the earlier occasions also, the appellant was not represented. In view of our last order, we take up the matter to find out whether any substantial question of law is involved in favour of admission of the appeal, or not.

2. Being aggrieved by and dissatisfied with the judgment and decree dated 9th March, 2021 passed by Learned District Judge Purba Bardhaman in Title Appeal No. 6 of 2019, affirming the judgment and decree dated December 17, 2018 passed by Learned Civil Judge (Junior Division), 3rd Court, Purba Bardhaman in Title Suit 77/2013, appellant has preferred this second appeal.

3. Plaintiff's /respondent's case in a nutshell is that the suit property, along with property, under plot No. 127 originally belonged to one Sk Based Ali. Plaintiff purchased

the suit property by way of registered sale deed dated 01.04.1976 and name of plaintiff's vendor Sk Based Ali was duly recorded in RSROR in respect of the suit property. Plaintiff has been possessing and cultivating the suit property by paying government rents for the suit property regularly. All on a sudden on 10.06.2012 defendant No.1 proclaimed that the suit property has been recorded in his name in the LRROR and threatened that he will forcibly dispossess the plaintiff from the suit property and would construct house over the same. On searching, plaintiff came to know on 20.06.2013, that the suit plot along with property under the plot No. 127 has been recorded in the name of defendant No.1 in LRROR which is absolutely erroneous as defendant No.1 has no right title or interest over the suit property and aforesaid original owner Sk Based Ali never transferred the suit property in favour of defendant No. 1 and as such defendant No. 1 never became owner of the suit property. Hence, the suit for declaration and for permanent injunction.

4. Defendant No.1 contested the suit, by filing written statement and denied all material allegation and contended that admittedly Sk Based Ali was original owner of the suit property along with property under plot No. 127 and he is maternal uncle of defendant No.1 by relation. From the childhood defendant No. 1 was brought up by his said maternal uncle Based Sk and as such at the time of leaving his own village, he transferred the suit property in favour of defendant No.1 by a registered deed dated 07.12.1973 and the name of defendant No.1 recorded in

the LRROR . Since then the defendant No. 1 has been residing in the suit property and also cultivating the suit land and thus, defendant No.1 has accrued another right title over the suit property by possessing the same adversely. Further case of defendant No. 1 is that Based Sk died long before 1976 and as such it is not possible that he transferred the suit property in favour of plaintiff in the year 1976. Therefore, the sale deed on the basis of which the suit has been instituted by the plaintiff has got no existence and it is a product of forgery. Plaintiff has no right title or interest in the suit property and as such the suit is liable to be dismissed.

5. Learned trial Court on the basis of pleadings, framed as many as 8 issues. During trial plaintiff himself deposed as PW1 and one of his neighbours supported his case as PW2. The plaintiff has also produced a person from DSR-1, Purba Bardhaman who deposed as PW3. The Plaintiff during evidence has exhibited sale deed dated 01.04.1976 marked as exhibit 1, certified copy of RS khatian in respect of suit plot marked as exhibit 3, government rent receipts in connection with the suit property marked as exhibit 4 series and the certified copy of deed No. 7098/1973 marked as exhibit 5.

6. The Defendant No. 1 filed deed No. 7098/1973 in original which was marked as exhibit "A" (with objection) and certified copy of LRROR marked as exhibit "B". Three original rent receipts in connection with the suit property were marked as exhibit "C", certified copy of RSROR in

respect of Khatian No. 130 was marked as exhibit "D" and two notices of BLLRO were marked as exhibit "E" series.

7. The Learned trial Court decreed the suit in favour of plaintiff considering the fact that PW3 who is the man of DSR -1 Purba Bardhaman has clearly deposed before the court that sale deed No. 7098/1973 marked as exhibit 5 by which defendant No. 1 is claiming his right title interest in the suit property was not executed, in connection with the suit property but in connection with a separate property situated under the same Mouza and the sale deed of 1973 marked as exhibit-"A" filed by defendant has no existence at all in the official record. On the basis of such evidence the learned trial Court held that exhibit-"A" i.e. alleged original deed being No. 7098/1973 which is not matching with the official documents has no probative value and is void. It is not binding upon the parties to the suit. PW3 has proved the authenticity of the plaintiff's sale deed No.3050/1976 executed by Sk Based Ali in favour of the present plaintiff. Moreover the plaintiff has also filed and proved original rent receipts in respect of the suit property issued in the name of plaintiff which shows plaintiff is in possession of the suit property. Learned trial court concluded that the LRROR in respect of suit property in the name of defendant No. 1 has been prepared on the basis of a fraudulent deed marked as exhibit "A" and as such recording is erroneous.

8. Being aggrieved and dissatisfied with the aforesaid judgment dated 17th December, 2018 passed by learned

Civil Judge (Junior Division), 3rd Court, Purba Bardhaman, defendant preferred first appeal and said first appeal being title appeal No. 06/2019 came up for hearing before the Learned District Judge, Purba Bardhaman. Learned District Judge Purba Bardhaman was pleased to dismiss the first appeal as well as defendants' petition under Order 41 Rule 27 of the Civil Procedure Code with the following observation:-

“In view of such, this Court has got no hesitation to hold that the learned trial Court committed no error of fact or error of law in holding that the defendant no.1/appellant's alleged document of title being deed no. 7098 dated 07.12.1973 is not genuine one since such alleged registered document of title mismatches with the public document i.e. the volume kept in the Office of the District Registrar, Purba Bardhaman and the certified copy of the relevant volume i.e., Ext. 5 as marked in the trial Court.”

9. Said judgment and decree dated 09.03.2021 caused dissatisfaction to the defendant /appellant and for which he preferred the present second appeal on the ground that the learned courts below failed to appreciate that Sk Based Ali i.e. original owner was the maternal uncle and had brought up defendant No. 1/Appellant since his childhood Sk Based Ali executed and registered a deed of conveyance being No. 7098 dated 07.12.1973 in favour of the defendant and on that basis the name of defendant No. 1 was also recorded in the LRROR. Original owner Sk Based Ali died long before 1976 and as such it is hardly possible that he executed any deed in favour of plaintiff in the year 1976. Moreover the suit property has been duly recoded in the name of defendant No. 1 and as such he is in possession of the suit property, but plaintiff had not

prayed for any recovery of possession.

10. Though suit property might have recorded in the name of defendant No. 1 but from the facts and circumstances of the case it is clear that defendant No.1 /Appellant has admitted the possession of plaintiff /respondent No.1 over the suit property and DW1 further admitted in his cross examination dated 12.06.2018 that plaintiff /respondent No.1 had instituted title suit No. 77/2013, since he resisted him to take over possession in respect of the suit property. Facts admitted need not be proved and further more plaintiff in support of his possession, has filed and proved tax /khajna receipts in respect of the suit property. It is worthy to be mentioned that in his first written statement dated 18.06.2013, defendant No.1 had taken the plea that aforesaid original owner Sk Based Ali executed oral Heba in the year 1958 and since then defendant No. 1 is in settled possession and Sk Based Ali died long before 1976 and as such execution of deed in the year 1976 by him is not possible. Surprisingly in the additional written statement dated 18.03.2016, defendant No.1 had taken a contrary stand and in that additional written statement, defendant No.1 disclosed that his maternal uncle Sk Based Ali. executed a deed of conveyance being No. 7098 dated 07.12.1973 in his favour and by which he became owner of the suit property and his name has been duly recorded in LRROR. But PW3 who appeared before the court by virtue of summon and had brought relevant volume in respect of deed No. 7098 dated 07.12.1973 has disclosed that the

entry in the volume as kept in the office of the District Registrar in respect of deed No. 7098 dated 07.12.1973 does not match with exhibit "A" rather the said volume matches with exhibit 5, wherein it appears that not only plot number is different but also the vendor and purchaser of said deed No. 7098 are also different, which proves that exhibit 5 i.e. deed No. 7098 dated 07.12.1973 relates to different plot, executed between different vendor and purchaser and it has got no connection with the suit property and exhibit "A" filed by defendant being deed No. 7098 dated 07.12.1973 has no existence in the deed volume and as such it must be fraudulent deed and accordingly LR recording on the basis of such fraudulent deed is also erroneous.

11. Having found no substantial question of law involved, The second appeal is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure with a cost of Rs. 5,000/-.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)