

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CPAN/483/2021
Gourhari Das & Ors.
vs
Kanan Bala Samanta & Ors.
With
CAN/3/2020, CAN/4/2021
In
SAT 399 of 2017
Gourhari Das & Ors.
Vs
Smt. Kanan Bala Samanta & Ors.

For the Petitioners: Mr. Kusal Chatterjee, Adv.,
Mr. A. Pradhan, Adv.,
Mr. Tapan Kumar Mahapatra, Adv.,
Mr. Debrup Choudhury, Adv.

For the Respondents nos. 1 to 4:
Mr. Sounak Bhattacharya, Adv.,
Mr. Samaresh Chandra Dhara, Adv.

Heard on: 06 April, 2022.

Judgment on: 15 June, 2022.

BIBEK CHAUDHURI, J. : –

1. Upon an application being CAN 7858 of 2019 this Court on 21st January, 2020 passed an order restraining the respondents from disturbing the petitioners from making any disturbance with regard to ingress and egress of the petitioners to and from the suit land till the

disposal of SAT no. 399 of 2017. The said order was duly communicated to the respondents.

2. However, on or about 28th June, 2021, taking advantage of disruption of normal functioning of the Court due to Covid pandemic, the respondents have fenced the suit property with bamboos and wires and also constructed poles on all four sides of the suit property. Thus they have blocked ingress and egress of the petitioners and their family members to and from the suit property.

3. The petitioners informed the matter immediately to the jurisdictional P.S praying for police help to maintain the order passed by this Court on 21st January, 2020.

4. As the respondents willfully, deliberately violated the order dated 21st January, 2020 passed in CAN 7858 of 2019 arising out of SAT 399 of 2017, the petitioners have prayed for initiation of contempt under the Contempt of Courts Act, 1971 and to send them to civil prison.

5. The respondents have filed an affidavit in opposition controverting all allegations made out in the application for contempt. Specific case of the respondents is that the suit property was all along under the possession of the respondents. The entry in the Record of Rights also depicts that the respondents are in possession of the suit property and the fencing was constructed long ago to protect the suit property from the greedy hands of the appellants. The appellants were never in possession of the suit property. Both the courts below concurrently found that the respondents are in possession of the suit property and accordingly the

suit and the appeal were dismissed on contest. It is further contended by the learned Advocate for the respondents that the Advocate who previously appeared on behalf of the respondents at the time of hearing of the application being CAN 7858 of 2019, could not depict the real picture before the Court with regard to possession of the suit property. He also failed to file affidavit in opposition against the aforesaid application. Therefore, this Court passed the order dated 21st January, 2020. The respondents/alleged contemnors further submits that they did not put up any fencing after the order dated 21st January, 2020 was passed by this Court or during the period of Covid pandemic.

6. The appellants by filing a rejoinder affidavit has denied the allegation of possession of the suit property by the respondents. It is further stated by them that in a proceeding before the jurisdictional BL & LRO being Misc Case no. 2147 of 2012, it was proved upon field enquiry that the appellants are in possession of the suit property and accordingly their names were recorded in the Record of Rights.

7. At the time of hearing of the application for contempt, the learned Advocates for both sides have produced the copies of the plaint, written statement, evidence adduced by the witnesses on behalf of the plaintiffs/respondents and defendants/appellants and finally published L.R Record of rights.

8. In the trial courts, respondents as plaintiffs brought the suit for declaration, rectification of deed and permanent injunction against the defendants/appellants alleging, inter alia, that .28 dec of land in R.S plot

no. 712 and .25 dec of land in R.S plot no. 712/1686 were recorded in the name of one Purnamoyee Sangram and Laxman Sangram. On the death of Laxman Sangram, his widow Kironbala transferred .10 $\frac{1}{2}$ dec land out of .23 dec land by a registered deed of sale to the plaintiff and his two brothers on 9th July, 1979. Subsequently said Kironbala transferred .21 $\frac{1}{2}$ dec land by a registered deed of gift dated 30th September, 1981 to one Narayan Das. The plaintiff and his brothers purchased .10 $\frac{1}{2}$ dec land from Narayan Das by a registered deed of sale date 15th April, 1986, subsequently, Narayan Das sold out remaining land in dag no. 712 in favour of the plaintiff and his brothers by executing registered deed of sale dated 15th April, 1986, 9th February, 1982 and 23rd December, 2011.

9. Further case of the respondents/plaintiffs is that another co-sharer namely Purnamayee Sangram executed a deed of gift in favour of defendant/appellant Gaurhari Das on 19th September, 1986 and transferred .21 dec of land. Subsequently on 22nd May, 1992 a deed of exchange was executed by and between the plaintiff and the said Gaurhari Das and the plaintiffs got .20 $\frac{1}{2}$ dec of land in dag no. 712 and 712/1686 in exchange of .30 dec land transferred to Gaurhari. The plaintiff thus becomes the owner of 52 $\frac{1}{2}$ dec land in dag no. 712. The defendant no.1 is the owner of $\frac{1}{2}$ dec land in the said plot of land. However the defendant no. 1 falsely executed a deed of gift in favour of his two sons, viz defendant no. 2 and 3 on 9th July, 2012 in respect of $\frac{1}{2}$ decimal land in plot no. 712 and 8.166 decimal of land in plot no. 712/1686. Since defendants tried to take possession of the disputed land

in dag No.712/1686 and tried to raise construction over the same, the plaintiffs have filed the suit.

10. It is pointed out by Mr. Saunak Bhattacharya, learned Advocate for the alleged contemnors that the order dated 21st January, 2020 was passed without considering the fact that in both the cases the possession of the plaintiff was proved and therefore the order of injunction passed by this court on 21st January, 2020 is required to be modified. The plaintiff did not put any fencing after the order dated 21st January, 2020 being passed. The said fencing and poles were set up around the suit property from before the order dated 21st January, 2020 being passed. In support of his contention Mr. Bhattacharya refers to a decision of this Court in the case of **Sital Chandra Das vs. The State of West Bengal & Ors.** reported in **1988 (2) CLJ 510**. In paragraph 3 of the said report it is held by a Coordinate Bench of this Court that the entries in the finally published records-of-right under the West Bengal Estates Acquisition Act at best give rise to rebuttable presumption and where judgments of civil courts exist and are found to be inconsistent with such entries in the records-of-right, such presumption should be deemed to have been rebutted and difficulty should be felt in incorporating the correction in conformity with the civil court judgment and decree. In case of conflict between the judgment and decree of the trial court and those of the appeal court, the latter would prevail.

11. He also refers to another judgment in the case of **Kazi Mohammad Hossain vs. Sibram Bondopadhyaya** reported in **AIR 1967 Cal 10**.

Paragraph 16 and 17 of the said judgment are relevant and quoted below:-

16. I shall pursue this matter to some more detail, to illustrate the principle I have just explained. If the entry in the record of rights is made and published before any decision is given by the trial court, the trial court must consider the presumption and then allow the parties an opportunity to rebut that presumption. If there is no rebutting evidence then the courts will have to accept the presumption as conclusive. But if on the other hand rebutting evidence is given which rebuts the presumption of accuracy then the courts have the jurisdiction to declare the entry in the record of rights as erroneous.

17. What happens when the record of rights is prepared and finally published after the decision given by the trial Court? Normally the decision of the trial court subject of course to appeals and revisions under the law should be binding on the parties and the Settlement Authority making the record-of-rights. The Settlement Authorities are bound by the civil court decree already on record. In this case I fail to understand how the Settlement Authorities could make the entry for simple reason that the parties and their objectors between them certainly could have produced the decision. If I assume that they did, then in that case the Settlement Authorities preparing the record of rights contrary to the existing judicial decision, cannot thereby create any presumption in favour of such record so far as the rights of such parties on the point are concerned. No doubt the rights of persons who are not parties to the decree will not be affected by the decree and there the record of rights will be presumed to be correct in their favour until the contrary is proved by evidence, but that is not the case here before me in this appeal.”

12. Coming to the instant case it is submitted by the learned Advocate for the plaintiffs that the trial court declared plaintiff's right, title, interest and possession over 'Ka' schedule property of the plaintiff by rectifying the

deed of exchange being No.3438 dated 22nd May, 1992. The said judgment was affirmed by the First Court of Appeal in Title Appeal No.2 of 2016.

13. Learned Advocate for the appellants/ petitioners on the other hand, as best his submission on the final published Record of Rights in respect of dag no. 712/1686 and 712. Both the dags were recorded in the finally published Record of Rights in the name of the sons of appellant no.1 Gaurhari Das. The Record of Rights were prepared on the basis of Misc. Case no. 2147 of 2012 in a proceeding under Section 50 of the WBLR Act. The Record of Rights creates a rebuttable presumption as to the possession of the property. Till the Record of Rights are not rectified on the basis of the judgment passed by the civil court, presumption in favour of possession of the defendants in respect of the suit property will continue.

14. Therefore I do not find any reason to interfere or modify the order dated 21st January, 2020 passed in CAN 7858 of 2019. However at this stage of hearing of the appeal, I also do not find any reason to hold that the plaintiffs/respondents have violated the order dated 21st January, 2020 passed by this Court by putting fence and fixing poles around the suit property. There is no inspection report of the suit property.

15. In view of such circumstances I am also not inclined to pass any order upon the application filed by the petitioners praying for issuing a rule directing the Opposite Parties as to why they will not be sent to civil prison for violation of the order dated 21st January, 2020.

16. The application being CPAN 483/2021 and connected applications are accordingly disposed of.

(Bibek Chaudhuri, J.)