

**Arabinda Sasmal
Vs.
Sri Narayan Chandra Khatua & Ors.**

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The appeal is of the year 2011.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list.

Today the appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

It appears from the record that a coordinate bench on 06.3.2017 upon noticing the defects, notified by the stamp reported on 16.6.2011, directed the matter to go out of list with liberty to mention after rectification of defects. No attempt has been made since then to cure or rectify such defects.

The appellate judgment and decree dated 11th April, 2011 and 21st April, 2011 affirming the judgment and decree passed by the trial court on 27th March, 2009 and 6th April, 2009 in a suit for declaration, recovery of possession and injunction is the subject matter of challenge in this second appeal.

We have carefully read the judgment of the first appellate court as well as the trial court and the grounds of appeal.

Although, we could have dismissed the appeal for not removing such defects, however, we propose to find out if any substantial question of law(s) is involved in this second appeal.

The trial court decreed the suit on contest.

The plaintiffs filed the suit for declaration, recovery of possession and injunction.

The plaintiffs' case in short is that one Janannath Khatua @ Jagu was the recorded owner of the suit property situated in Uchitpur mouza. He was in possession of that property and subsequently he died intestate leaving behind his four sons, namely, Chintamoni Khatua, Bhagbat Khatua, Abinash Khatua and Atul Khatua. After the death of Janannath his four sons were in joint possession of the suit property along with other non-suit property. Out of four brothers Bhagbat died intestate leaving behind his wife Santabala as his only legal heir. Abinash died intestate leaving behind his wife Khandubala as his only legal heir and since then Chintamoni, Santabala, wife of Bhagbat, Khandubala, wife of Abinash and Atul have been enjoying the suit property including non-suit property having their 1/4th share each. Khandubala sold her share to Chintamoni and Atul Khatua. After the death of Jagannath, Chintamoni and Atul used to look after the ejmali property on behalf of other co-sharers. Atul and Chintamoni purchased the share of Khandubala from their joint family fund for the benefit of the joint family and the said property has been treated as ejmali property of Chintamoni, Santabala and Atul. The plaintiffs alleged that at that time Chintamoni and Atul had no independent source of income but in connivance with each other they have recorded their names in the record of right by deceiving Santabala, although Santabala was in possession of that ejmali property at the relevant point of time. Subsequently, Santabala

transferred the suit land along with 1/3rd share of non-suit land to the plaintiffs by a registered deed of gift executed on 15.10.1974 and registered on 16.10.1974. Since then the plaintiffs are in possession and enjoying the same along with other non-suit land and have been paying government rent and other taxes.

Subsequently, the plaintiffs filed a suit for partition being Partition Suit No. 16 of 1979 before the Assistant District Judge, Midnapore, which was subsequently re-numbered as T.S 45 of 1988. In the said suit a preliminary decree was passed on 12.4.1991 in favour of the plaintiffs and the final decree was passed on 02.8.1993. The plaintiffs got the possession of the suit property along with other non-suit property on 09.10.1993 on the basis of the report of the Survey Commissioner dated 17.02.1992 and that final decree was executed in Execution Case No. 4/1993.

The plaintiffs alleged that the defendant did not inform the plaintiffs that he purchased the suit property from one Prodyut Singha and he threatened to dispossess the plaintiffs. Under such circumstances, the plaintiffs filed the suit claiming, inter alia, that purchase deed of the defendant is illegal and not binding upon the plaintiffs as Balai Khatua being the defendant of the partition suit did not mention in respect of any such transfer of the suit land in that suit.

The defendant contested the said proceeding. The defendant in their written statement alleged that Jagu @ Jagannath Khatua, Sashi Khatua, Shambhu Khatua and Ishan Khatua originally belonged 14 dec. of land in plot no. 116, 3 dec. of land in plot no. 462 in respect of their 1/4th

share each. Out of which plot no. 116 is the suit plot and plot n o. 462 is a non-suit plot. It is further stated that the names of these 4 co-shares have been recorded in CSROR being Khatian no. 377. After demise of Jagganath his 4 sons namely, Chintamony, Bhagabat, Abinash and Atul inherited equal $1/16^{\text{th}}$ share each in the property left by their father as mentioned above. After demise of Bhagabat his wife Santa Bala inherited his share in the property and subsequently by dint of a registered gift she transferred her share to the plaintiffs. As a result the plaintiffs became the owners only less than $1/3^{\text{rd}}$ portion of the suit land. The defendants further contended in their W.S that the plaintiffs had never owned $3\frac{1}{2}$ dec. of land in the suit plot. After demise of Soshi Khatua his legal heir inherited $1/4^{\text{th}}$ share in the suit plot and transferred the same to one Tailakya Maji by executing a deed of sale and it has been recorded in RSROR in the name of Tailakya Maji and the rest portion has also been recorded RSROR separately in the name of Ishan Khatua. It is the further case of the defendants that Tailakya Maji has transferred 7 dec. of land in favour of his son Ajit Maji from the suit plot by dint of a registered gift dated 20.6.75. Another original co-sharer Balai Khatua has been possessing his share in the suit plot and he got $3\frac{1}{2}$ dec. of land by dint of deed of exchange dt. 9/8/77 and subsequently he transferred that property by dint of a gift deed dated 01.7.86 in favour of Pradyut kumar Singha. This Pradyut Kumar Singha sold out his $3\frac{1}{2}$ dec. of land in the suit plot in favour of this defendant by executing a registered sale deed dated 02/12/90 and the defendant is in

possession and enjoying the said 3 ½ dec of land by constructing his dwelling unit thereon.

It is further contended by the defendant that he was not a party in the partition suit and the suit decree is not binding on him. The report prepared by the Survey Pass Commissioner is also not binding on him. He stated that Survey Pass Commissioner without making any physical verification of the suit plot recorded more land in favour of the plaintiffs than their legitimate shares only through paper works. On that basis, the trial court framed seven issues. On the basis of the oral and documentary evidence, the trial court arrived at a finding that the plaintiffs are entitled to decree as prayed for. The basis of the judgment of the trial court appears to be that the judgment and decree of T.S 45/88 would show that 14 decimal of suit land in plot no. 116 was the subject matter of the partition suit. In view of partition suit, altogether 31 defendants were made parties as co-sharers of the suit land along with other non-suit plots and partition suit was instituted by the present plaintiffs. It is revealed that Ishan Chandra Khatua, the legal heir of Shambhu Khatua, Tailyaka Maji and Ajit Maji have been impleaded as defenants. The preliminary decree passed on 12/4/91 in that suit and the final decree proceeding was initiated and concluded on the basis of the report of the Pleader Commissioner. It would appear that the Pleader Commissioner prepared the report pursuant to make a spot verification on two dates. The report of the Advocate Commissioner would show that on 10.10.1993 the possession of the plaintiffs confirmed in respect of the suit land and upon delivery of possession the

Execution Case was disposed of.

The trial court as well as the first appellate court has gone through the CSROR and RSROR records before concluding in favour of the appellant.

It further reveals that the preliminary decree dated 17/7/1992 was passed in that suit was aware by the defendant.

The materials on record reflected that a title appeal bearing no. 59/94 was preferred by the defendant nos. 1,2,6,7 and 9 against the decree of T.S 45/88 originally numbered as T.S 16/79. The then Ld. District Judge Paschim Medinipur rejected the petition filed under Section 5 of the Indian Limitation Act and resultantly dismissed the TA 59/94 dt. 24/8/94. From the materials on record it further appears that on 15/7/92 the plaintiffs had filed a petition with a proposal to the pleader commissioner to allot lands to them from village Uchitpur and Keru and not from Mouza Gunduth because the entire land of that Mouza has already been sold out by the defendant and the entire Bastu, Khamar etc. in mouja Uchitput have been covered by the house of the defendant. In view thereof they suggested to the pleader commissioner to adjust their share from other "Kala Land" in the suit. It has been reflected from the report of the pleader commissioner that he allotted .35 dec. of land to the plaintiffs in plot no. 116 under mouja Uchitpur of Khatian no. 377/379 by metes and bounds which has been shown in the attached map. Though from Ext. A and Ext. B which are the Govt. rent receipt and Panchayet tax receipt it is found that 3 ½ dec. of land in plot no. 116 of Uchitput Mouja has been recorded in the name

of the appellant Aravinda Swasmal and he used to pay rent to the concerned authority and ext. C is the purchase deed of the appellant being no. 4245/99 by dint of which he purchased the property from one Pradyut Singh on 02/12/1990 but it is well proved from the materials on record that the plaintiffs have got the possession on the basis of the decree of the partition suit 45/88 (originally T.S 16/79) in the year 1994 through court by execution process being T. Ex. 4/93 on the strength of a decree passed by a competent court and the court balif has executed the decree after giving possession of the suit land to the decree holders and that execution case was disposed of on full satisfaction.

In view of concurrent finding of facts arrived at by both the courts below on the basis of cogent evidence, we do not find any reason to interfere with the judgment and decree under challenge in this second appeal. 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.)

