

Item-36. 08-09-2022

SA 126 of 2021
CAN 1 of 2016 (old CAN 5257 of 2016)
CAN 4 of 2021

sg Ct. 8

Nagendra Nath Giri & Ors.
Versus
Santosh Patra & Ors.

Mr. Anindya Bose, Adv.
Mr. Diptendu Mandal, Adv.
...for the appellants

Mr. Aritra Shankar Ray, Adv.
...for the respondent no.1

In Re: CAN 4 of 2021

This is an application for substitution of the legal heirs and representatives of the appellant no.2, who died intestate during the pendency of this second appeal on 9th May, 2020 leaving behind the proposed substituted appellants. The proposed substituted legal heirs are all major, sui juries and sound mind.

The department is directed to carry out necessary amendments in the memorandum of appeal and the connected applications by deleting the name of the appellant no.2 from the cause title and in place and instead of the said appellant, the proposed substituted appellants shall be added according to the full description of the proposed substituted appellants as mentioned in paragraph 2 of the petition within two weeks from date.

With the above direction, the application for substitution being CAN 4 of 2022 is disposed of.

In Re: SA 126 of 2021 and CAN 1 of 2016 (old CAN 5257 of 2016)

The decree and judgment of affirmation dated 23rd December, 2015 is the subject matter of challenge in this appeal. The Appellate Court had affirmed the judgment and decree dated 25th June, 2013 passed by the learned Civil Judge (Junior Division), Dantan, Paschim Medinipur in Title Suit No. 1 of 2007.

The second appeal has come up for admission. The appellants filed a suit for declaration of title and for permanent injunction.

Briefly stated, the suit property originally belonged to one Kailash Giri. The name of Kailash Giri is recorded in CSROR. He died before the promulgation of Hindu Succession Act leaving behind his only son namely, Upendra Nath Giri as the sole legal heir as he was held to be in possession in the RSROR. It is alleged that the defendants have inserted the name of their predecessor removing his name illegally. The suit was filed for declaration of title on the allegation that such entries in the RSROR and LRROR are illegal.

The learned Trial Court dismissed the suit ex parte since the defendants did not contest the suit. The plaintiffs are the legal heirs of Upendra. Before the learned Trail Court, the plaintiffs produced ROR-S that was marked as Exhibit-1 (series). The learned Trial Judge proceeded on the basis that the entries in the record of rights is presumed to be correct. Unless it is proved to be incorrect by evidence and in view of the fact that the plaintiffs have failed to adduce any evidence to rebut such presumption, the plaintiff is not entitled to such relief. Although, we do not find much discussion with regard to the quality of evidence adduced before the trial court, however, the Appellate Court has considered

the matter in some details. The appellants seem to have failed to prove any collusion with the settlement employees in the preparation of the RSROR and LRROR in the name of the defendants. When a record of right is challenged and evidence is adduced, the record of right loses its presumption and the title of the plaintiffs may be required to be reassessed which may ultimately affect the entries in the RSROR and LRROR.

There cannot be any doubt that when the record of right is under investigation in the Civil Court and the parties have adduced evidence concerning the correctness of the entry, the entry in the ROR loses its weight. However, it has to be remembered that in establishing such title in the suit property, the basic evidence has to be laid to show that he has right over the property. The recording of the name of the defendants in the ROR creates such strong presumption that during the revisional settlement, all procedures were duly followed and thereafter, it culminated in the proper recording.

The onus is on the plaintiffs to rebut this strong presumption. It may be correct that the entry in the record of right does not confer title but it can be a basis of a title as the possession follows title. The entries in the record of right have remained under challenge for a considerable period of time thereby creating a strong presumption of its correctness as it was never challenged by Upendra during his lifetime. The appellants also did not approach the Revenue Officer for correction of the record of rights. All these entries were taken into consideration.

We find that the trial court was justified in dismissing the suit and the appeal court was justified in upholding the said order.

The quality of the evidence adduced does not inspire the confidence of the Court and is not of such quality that could rebut the presumption accrued in favour of the respondents by reason of their names inserted in the record of rights which existed for a considerable period of time.

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

In view of the dismissal of the second appeal, the stay application being CAN 1 of 2016 (old CAN 5257 of 2016) stands also dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)