

22.09.2022
SL No.26
Court No.8
(gc)

SA 65 of 2021

**Ahuda Bibi & Ors.
Vs.
Sri Baidya Nath Chakraborty & Ors.**

In terms of the order dated 27th January, 2022, a report is filed by the Assistant Registrar-XVI dated 17th May, 2022.

The report filed by the Assistant Registrar-XVI dated 17th May, 2022 shall be placed in the Administrative Site.

The second appeal was presented in the year 2005, but no attempt was made to move the second appeal. The second appeal was adjourned on 10th January, 2022 and thereafter on 27th January, 2022 the matter was released due to lack of determination. Thereafter, the matter again reappeared on 9th September, 2022 and continued to appear in the list.

The appellants are not represented nor any accommodation is prayed for on behalf of the appellants.

The appellate decree dated 5th February, 2005 confirming the judgment and decree dated 13th May, 1997 passed by the learned Trial Judge in a suit for declaration of title is a subject matter of challenge in this second appeal.

The appellants at the Trial Court as well as the Appellate Court had tried to establish that he is a thika tenant under the defendant Nos.1 and 2 but he failed to

establish such right both before the Trial Court and the Appellate Court. It appears from the pleadings and the materials on record that the case of the plaintiffs was based on the plea that their predecessor Mijad Sk. was inducted in the suit property by the defendant Nos.1 and 2 as a thika tenant on consideration of a yearly rent in kind. The defendants were not inclined to grant any rent receipt to Mijad Sk. and or the plaintiffs since their induction in the suit property. The plaintiffs were under impression that since the enactment of West Bengal Estate Acquisition Act their right has been vested to the State as they have been treated as a direct tenant under the State but contrary to the belief it was found that in the R.S. Operation, the name of the defendants appeared.

The suit property was situated in Mouza-Beach Kandi in the district of Murshidabad. According to the plaintiffs, Mijad Sk. used to cultivate the suit property as Thika Proja under the defendant Nos.1 and 2. They are in possession of the suit property since the lifetime of Mijad Sk. Mijad Sk. was a village rustic and illiterate person. After his death, his nephew Sahadat Sk. used to look after the suit property on behalf of the plaintiffs. Sahadat Sk. used to look after the suit property upto 1368 B.S. Mahatab Ali who is the husband of the plaintiff No.2 is in cultivation of the suit property since 1368 B.S. after Sahadat Sk. The "Math Khasra" R.S.R.O.R. in respect of the suit property has been prepared in the name of the plaintiffs but taking advantage of the simplicity and

absence of the plaintiffs, the defendants recorded their names in the R.S.R.O.R. in respect of the suit property in connivance with the settlement authority personnel. The defendants disclosed the R.S.R.O.R. in respect of the suit property from where it appears that their names appeared in the record of rights and it was made with the motive to oust the plaintiffs from the suit property. The defendants denied that Mijad Sk. was inducted on contract basis for a period of seven years from 1331 to 1337 B.S. After expiry of the said contract period, Mijad Sk. surrendered the possession of the suit property in favour of the defendants and thereafter the defendants inducted one Hareshtulla @ Hari Sk. on contract basis for cultivation. Said Hareshtulla @ Hari Sk. continued said contract upto 1344 B.S. Thereafter, the defendants are in possession and enjoyment of the suit property through cultivation by employing their own persons. Thereafter, by virtue of an amicable settlement between the defendants, the defendant No.1 was allotted plot No.141 and 435 and defendant No.2 was allotted plot No.457. The State Government contested the suit and denied the allegations in the plaint. It appears that the appellants/defendants advanced an argument before the Trial Court as well as before the Appellate Court that on the basic principle “once a tenant was always a tenant”. The possession of the defendants/appellants by virtue of Exhibit-1 cannot be denied. It was argued that R.S.R.O.R. (Exhibit 1/a and Exhibit 1/b) both are invalid and both the R.S.R.O.Rs in

respect of the suit property in the name of the defendants have no potentiality in comparison to Exhibit-1. The appellants referred to Section 19 and 20 of the Bengal Tenancy Act and cited **88 C.W.N 789 (Kandan Mandi @ Santal & Ors. Vs. Santi Prosad Chatterjee & Ors.)** in support thereof. It was a contention of the appellants that Mijad Sk. was never evicted or surrendered his possession of the suit property in favour of the defendants and in absence of any such proof, the continuity of possession of Mijad Sk. has to be presumed. The defendants contended that Mijad Sk. upon contractual period of cultivation was over, Mijad Sk. surrendered and thereafter subsequent persons were appointed till the properties are amicably settled between the parties. It was submitted that the plaintiffs have failed to establish their continuity of possession in respect of the suit property. The plaintiffs also claimed to have failed to prove such continuity as such they are not entitled to legal benefits of Estates Acquisition Act, 1953 on the basis of Exhibit-1. In support of the aforesaid submission, reliance was placed on **18 C.W.N 545 (Jahar Lal Banduri & Ors. Vs. Nanda Lal Chaudhuri & Ors.)** and the Serial No.3 Schedule III of the Bengal Tenancy Act, 1885. Both the Courts have considered the said submission as well as the evidence oral and documentary placed before them. The Trial Court accepted the position that Mijad Sk. did not have any interest and the defendant was failed to establish that there has been a subsequent changes by

which different persons have occupied the said plot under the defendants. The Appellate Court affirmed the judgment of the Trial Court with the following observation:-

“On scanning of the case record I found no any scrap of paper by which it could be presumed that the appellant/plaintiffs were in possession over the suit property. To substantiate the continuity in possession over the suit property could be proved by producing the receipt of payment of rentals issued by the defendants in favour of the plaintiffs or in favour of their predecessor Mijad Sk. But no such receipt or any document is produced by the plaintiffs’ side. On the other hand, the deposition of P.W.4 Mahatab Ali “no application has been filed by the plaintiffs before any Settlement Officer for correction of the R.S. record of the suit properties” – leads to presume that there was acquiescence on the part of the plaintiffs in respect of such R.S.R.O.R. Therefore, the flame of Ext.‘1’ has been extinguished by producing Ext.‘1/a’ and ‘1/b’. Rather, the report of surveyor Advocate speaks nothing regarding possession of the plaintiffs over the suit property. Considering such position, the legal provisions and cited references of the appellants’ side are not applicable in this suit. ON the other hand, reliance can be put on the cited legal provisions and references of the respondents’ side to the extent of possession matter. Therefore, in my considered view, I am of the opinion that the ld. Lower Court below was in righteous path in dismissing the suit. ”

This finding of the First Appellate Court read with the evidence on record does not call for any interference.

Accordingly, the second appeal being SA 65 of 2021 stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)