

22.09.2022
SL No.27
Court No.8
(gc)

SA 66 of 2021

Sri Subarna Naskar & Ors.

Vs.

Sri Bhabataran Paik & Anr.

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 17th August, 2004 confirming the judgment and decree dated 28th November, 1989 passed by the learned Trial Judge in a suit for declaration of title and confirmation of possession and other reliefs is a subject matter of challenge in this second appeal.

Shorn of details, the suit plot originally belonged to Dinanath Naskar, Nilmani Naskar and Siromani Naskar.

Dinanath Naskar died leaving behind Haripada, Patit and Tarani. Nilmani Naskar died intestate leaving behind Usha Charan and Nabin Chand. Siromani Naskar died intestate leaving behind Narayan Chandra. Haripada died as a bachelor and, accordingly, Patit and Tarani inherited the share of Haripada. In the trial, the Kobala by which Usha and Nabin sold their share in the suit plot to the plaintiff No.2 on 21st January, 1943 was exhibited and marked as Exhibit-1. Tarani sold his 1/6th share in the suit plot to the plaintiff No.2 by a registered Kobala dated 12th April, 1943. Patit Paban sold his 1/6th share to the plaintiff No.1 by a registered deed executed on 26th October, 1943 and ultimately registered on 26th October, 1944. Narayan Chandra Naskar sold his share in the suit plot to the plaintiff No.2 by a registered deed dated 25th February, 1944. The plaintiffs have specifically stated that in Exhibit-1 and Exhibit-2, the plot No.3142 has been wrongly printed as plot No.3141. In the relevant portion of the Kobala where the plot numbers were found to be in torn condition. The certified copy of the Kobala would show that the said two deeds mentioned plot No.3142. According to the plaintiffs, parties were negotiating for sale of plot No.3141 but the scribe has wrongly mentioned the plot No.3142 in place of plot No.3141, apart from there is no other discrepancy. The plaintiffs further contended that under Khatian No.78, there is no plot No.3142 and it can be safely concluded that the intention of the plaintiffs was to purchase plot

No.3141 and the vendors also agreed to sell the plot No.3141. Simply due to misdescription of the plot in the deed, the plaintiffs' relief cannot be refused. The plaintiffs' right over plot No.3141 was established by the fact that Narayan Chandra sold the plot No.3141 under Khatian No.78 to the plaintiff No.2 and Patit Paban sold the plot No.3141 in respect of his share to the plaintiff No.1. It is found from Khatian that the plot No.3141 measuring 29 decimals of land has been recorded under the C.S. Khatian No.78 and L.R. Khatian No.1766. The entire suit plot has been recorded in the name of plaintiff No.2. The plaintiff has also paid rent to the Government. He has also filed the rent receipts from which his vendors paid rent to the previous landlord and on the other hand, the defendants could not produce any document showing their possession over the suit property.

It was on the basis of the aforesaid evidence, both Trial Court and the Appellate Court had arrived at a finding that the suit plot number has been wrong mentioned in Kobala, that is, Exhibit-1 and Exhibit-2. The learned Trial Court has in great detail analyzed the evidence and arrived at a finding to that effect that the Trial Court concurred with such finding. In view of the fact that the concurrent findings of fact have been arrived at the on the basis of the oral and documentary evidence, we do not find any reason to admit the second appeal. The second appeal does not involve any substantial question of law either.

Accordingly, the second appeal being SA 66 of 2021 stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)