

Item-48. 20-12-2022

SAT 357 of 2009
CAN 1 of 2009 (old CAN 9272 of 2009)

sg

Ct. 8

Panchu Gopal Mondal & Ors.

Versus
Rabiram Mondal & Ors.

The matter appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The appellants are not represented nor any accommodation is prayed for on behalf of the appellants. The appeal is of the year 2009.

It appears from record that on 20th January, 2022, on the prayer of the learned Counsel for the appellant, the matter was directed to go out of list.

The defects notified by the Additional Stamp Reporter dated 19th August, 2019 has not been removed as yet. We find that a co-ordinate Bench on 22nd February, 2010 noticing such defect directed the matter to go out of list with liberty to mention in the event the defect pointed out by the Stamp Reporter is permitted to be removed by the appropriate Bench. Since then, the matter did not appear until 29th November, 2022. This matter was listed in the warning list of cases. In spite of due knowledge, no attempt was made to remove the defects which clearly shows that the appellants are not interested to proceed with the appeal at all.

The appellate decree dated 29th November, 2022 affirming

the judgment and decree dated 27th November, 2000 in a suit for declaration, recovery of khas possession and also permanent injunction is the subject matter of challenge in this second appeal.

The title suit was decreed by the Trial Court as well as First Appellate Court. The plaintiffs were able to establish their title over the suit property. On the basis of a patta dated 17th January, 1949 executed by Sibnath Sarkar and Nishikanta Sarkar, a plot of land has been taken by the plaintiff, Nemai Mondal. The plaintiff stated that the possession was delivered to the plaintiff who used to pay rent in respect of the suit property. Thereafter, Nemai transferred the said property in favour of his wife, Khudibala. Khudibala subsequently, transferred the said property to the original plaintiff (her husband) by a deed of gift. Subsequently, while in possession of the suit property the original plaintiff transferred the suit property in favour of his younger son i.e, the present plaintiff/ respondent by executing a deed of gift dated 14th March, 1991. The plaintiff has narrated the acquisition of title in respect of the properties in question and was able to establish the title to the said property, both on the basis of the oral and documentary evidence.

The defendants in their written statement, however, has denied the execution of any deed of gift by Khudibala in favour of her husband Nemai and the subsequent deed executed by Nemai in favour of Rabinram, the present plaintiff. Accordingly, after the death of Khudibala the suit property devolved upon her legal heirs, i.e., her husband Nemai and the appellants.

In the written statement the defendant appellant admitted the ownership of Nemai in respect of 33 decimal of land in plot nos.

1534 and 1535. They have also admitted the devolution of the property of Khudibala in respect of the aforesaid two parts of land. The appellants had not claimed any right over any other properties. The principle issue was whether Khudibala executed the deed of gift in favour of Nemai and whether Nemai subsequently executed any deed of gift in favour of his youngest son Rabinram, the present plaintiff. The plaintiff duly proved the execution of the deed of gift in his favour by his father. From the said deed it is clear that Khudibala executed the deed of gift in favour of her husband. The appellants contended that the said deed is forged and fabricated but could not demolish the evidentiary value of the said deed or its existence by any evidence. They could not establish the deed is forged. The appellants also denied the execution of deed of gift of Nemai on 14th March, 1991 in favour of his youngest son. The said deed of gift was duly disclosed and proved by the plaintiff. The PW1 discloses in his evidence that he had been in possession of the suit property since the date of existence of the deed of gift and had been enjoying the usufructs.

The appellants had also claimed acquisition of title by adverse possession, however, the said claim could not be established as there has been no pleading to that effect disclosing all necessary particulars and the deed since when the possession became adverse, moreover the evidence on record would show that the appellant has failed to show as to when they dispossessed the real owner and thereafter they remained in continuous, upon and hostile possession of the suit property to the exclusion of the real owner.

We have carefully read the judgments of both the Trial Court as well as the First Appellate Court. We find that there are adequate materials available on record on the basis of such findings can be arrived at. The findings are based on proper appreciation of fact as well as oral and documentary evidences.

We do not find any perversity in the concurrent finding of facts with regard to the right, title and interest of the plaintiff.

Under such circumstances, the second appeal stands dismissed at the admission stage.

The connected application is also dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)