

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

S.A. 70 of 2021

with

I.A. No. CAN 1 of 2016 (Old No. 9779 of 2016)

Hafizul Haque Shah & Anr.

Vs.

Mahammad Ali Sah & Ors.

For the Appellant

: None appear

For the Respondent

: None appear

Order dated : 23rd June, 2022

Siddhartha Roy Chowdhury, J (Oral):- Challenge in this appeal is to the judgment and decree passed by the learned First Appellate Court in Title Appeal No. 18 of 2012, affirming the judgment and decree passed by the learned Civil Judge, Junior Division in Title Suit No. 335 of 2000. To appreciate if there is substantial question of law involved in the matter it is expedient to have facts of the case in brief.

The plaintiffs/appellants filed the suit for declaration and permanent injunction before the learned Trial Court stating inter-alia that they have acquired A Schedule Property having an area of .09 cent out of .24 cent comprised within plot no. 1079 under R.S. khatian no. 639 and L.R. khatian no. 1236 and 1237 by purchase from Anichhar Rahaman Sah, the defendant no. 5 (since deceased) under registered deed of sale being no. 6164 for the year 1988 with specific demarcation.

Since purchase, the plaintiffs/appellants have been possessing the same by exercising their right of ownership and got their names mutated in the revenue records. The respondent/defendant nos. 1 to 3 are the sons of the respondent/defendant no. 5 (since deceased) and respondent no. 4 is grandson of defendant no. 5.

According to the plaintiffs/appellants, the property described in Schedule 'A' is situated on the adjacent western side of their residential unit over plot no. 1078 intervened by a public pathway. They have been possessing the property continuously, peacefully, uninterruptedly, and in assertion of hostile title thereto for more than 12 years within the knowledge of the defendants/respondents.

While they have acquired indefeasible title over the said 'A' Schedule Property by purchase and by virtue of adverse possession; the defendants/respondents in collusion with each other have been claiming their right title interest over the 'A' Schedule Property and the plaintiffs/appellants are under constant threat of dispossession from the property in suit.

The defendant/respondent nos. 1 to 4 contested the suit by filling written statement which was adopted by defendant/respondent nos. 5 (a) to 10. It is specific case defendants/respondents that the suit plot no. 1079 having an area 24 decimal of land was originally owned by Addul Jabbar Sah, father of defendant no. 5, who purchased the same from one Aijan Bibi and got his name recorded in the Revenue Record, constructed his house on the southern portion of the plot and excavated a Doba for pisciculture on the northern side of the plot and planted trees on the bank of said Doba. He transferred 18 decimal of land including house and Doba to defendant/respondent no. 1, Md. Ali Sah and respondent/defendant no. 5, Anichhar Rahaman Sah by executing the registered Hebanama bearing no. 2279 of 1967. According to the defendants/respondents the title deed no. 6164 for the year 1988 (Exhibit-6) registered in favour of the plaintiffs is baseless, collusive, fraudulent, illegal and void inasmuch as Anichhar Rahaman Sah had no right to execute the deed. The plaintiffs/appellants did not get possession of 'A' Schedule Property during the life time of defendant no. 5. According to the defendants/respondents, the settlement record was prepared by misrepresentation without serving any notice upon them. As a result, they have filed a petition under Section 51(A) of the W.B.L.R. Act, before the competent authority for necessary correction.

Learned Trial Court as well as learned First Appellate Court having considered the issues surfaced out of the pleadings of the parties were pleased to answer the same against the plaintiffs/appellants.

The appellants contended inter-alia that learned Trial Court and learned First Appellate Court failed to consider the case of the plaintiffs/appellants both in facts and in law. Both the courts below on a complete misreading of evidence on record dismissed the suit. The documents filed by the plaintiffs/appellants were not taken into consideration by the learned Trial Court. According to the plaintiffs/appellants, learned First Appellate Court as well as learned Trial Court should have held that the defendant no. 5 the vendor of the plaintiffs/appellants was the owner of the property, who acquired 2/5 share out of 0.6 cent of land left by his father. It is further contended that provisions of Transfer of Property Act, regarding gift was not taken into consideration by the learned Trial Court; even learned First Appellate Court failed to exercise jurisdiction and committed grave error in not considering the application under Order 41 Rule 27 of the Civil Procedure Code filed by the plaintiffs/appellants.

Having perused the material on record we find that plaintiffs/appellants are claiming their right of title and possession over 'A' Schedule Property having an area of 9 decimal of land comprising within plot no. 1079, acquired by purchase by virtue of deed of sale bearing no. 6564 for the year 1988 executed and registered on 23rd June, 1988. But refuting such claim the defendant/respondent nos. 1 to 3 stated that the said quantum of land was transferred to respondent nos. 1, 2 and 3 by said Anichhar Rahaman Sah by executing a deed of Hebanama bearing no. 3468 for the year 1988 executed and registered on 22nd June, 1988. Therefore, the vendor of the

plaintiffs/appellants did not have any right to transfer the property described in 'A' Schedule of the plaint on 23rd June, 1988.

From the attending facts of the case it is admitted that 18 decimal of land comprised within the plot no. 1079 was originally owned by Abdul Jabbar Sah who transferred the same by virtue of registered Hebanama in favour of Anichhar Rahaman Sah and Md. Ali Sah. Thus, each of them acquired 9 Satak of land comprising within the plot no. 1079. Exhibit L says that Anichhar Rahaman Sah transferred 9 decimal of land in favour of the defendant/respondent nos. 1, 2 and 3 by executing the Hebanama on 22nd June, 1988, while the deed of sale was executed by said Anichhar Rahaman Sah (Exhibit-6) in favour of the plaintiffs/appellants on 23rd June, 1988.

Therefore, plaintiffs/appellants, the defendant/respondent no. 5 (since deceased) did not have the authority to transfer property in favour of the plaintiffs/appellants by executed a deed of sale on 23rd June, 1988, having transferred the same plot of land in favour of the defendants/respondents on 22nd June, 1988 by executing a deed of Hebanama.

It is the settled principle of law that record of right neither creates nor extinguishes the title of a person in respect of any property.

Therefore, in our considered opinion the record of right in favour of the plaintiffs/appellants will be of no help to establish their title in respect of the suit property.

The plaintiffs/appellants claimed to have acquired right title interest and possession over the suit property by purchase as well as by way of adverse possession. This averment or narrative of the plaintiffs/appellants sounds

improbable; a person having purchased piece of land by a registered deed of sale cannot claim to have been possessing the said property by way of adverse possession.

The plaintiffs/appellants who are claiming to have acquired title in respect of A Schedule Property despite having opportunity to seek further consequential relief for cancellation of the document under which defendants/respondents are claiming to have acquired title in respect of the self same property, decided not to do so.

The concurrent findings of facts, by the learned Trial Court and First Appellate Court based on oral and documentary evidence, cannot be said to be perverse. No substantial question of law is involved in this Second Appeal. In our opinion the Second Appeal is devoid of merit and is dismissed.

The department is directed to send down the Lower Court Records immediately.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)