

05.09.2022
SL No.30
Court No.8
(gc)

SA 71 of 2022

Sri Satyanarayan Chattopadhyay & Ors.
Vs.
Smt. Sadhana Dutta & Ors.

The second appeal has come up for admission. This matter was adjourned on until number of occasions on the prayer of the learned Advocate for the appellants. The learned Advocate for the appellants is not represented.

We propose to consider the appeal for admission on the basis of the available record and the question of law framed for admission. The second appeal is arising out of a judgment and decree dated 10th April, 2015 passed by the learned Civil Judge (Senior Division), Bolpur, Birbhum in Title Appeal No.51 of 2011, affirming the judgment and decree dated 6th August, 2011 passed by the learned Judge (Junior Division), 2nd Court, Bolpur, Birbhum in Title Suit No.72 of 2003 claiming that the original owner of the suit property was one Panchkori Chatterjee (Bhattacharjee), the uncle of the plaintiffs. Panchkori died on 10th January, 1974 issueless and hence his properties devolved upon his nephews. In the year, 1994, one Baneshwar Dutta claimed that the entire properties had been recorded in the name of his wife. The plaintiffs having come to know of such fact, approached the BL & LRO but could not immediately obtain any information and ultimately they approached the High Court by filing writ petition following which an order was passed restraining the present defendants/respondents from

interfering with the possession of the appellants. Thereafter the defendant No.1/respondent No.1 preferred an appeal against the said order being FMAT 3588 of 1994, the learned Single Judge in the said proceeding admitted the appeal and set aside the decree. Thereafter, BL & LRO at Labpur in deciding Misc. Case No.3 of 2000 relied on the decree passed in TS No.117 of 1972 and passed an order refusing to alter the recording of the name of the defendant No.1 in the LRROR. In the meantime, the plaintiffs/appellants obtained the certified copies of the proceeding in TS No.117 of 1972 wherein it appears that without effecting the service of summons upon the said Panchkori Chatterjee, the said suit was proceeded and decreed without bringing on record the legal heirs of the said deceased. The title suit was filed for declaration and permanent injunction.

The defendants contended that the said proceeding by filing a written statement denying the material allegations leveled against them. The defendants specifically contended that Panchkori Chattopadhyay and one Panchakori Bhattacharjee are not the same and identical person. The mother of the defendant No.1 namely Niharbala Dutta had received the suit property along with other properties by way of lease from Jadablal Estate and thereafter her name was recorded in the other properties but the suit property was recorded in the name of Panchkori Chattopadhyay. In view thereof, Nirharbala Dutta filed a suit in TS No.117 of 1972 against said Panchkori Chattopadhyay, State of West Bengal and Jadablal Debattar Estate in which the Trial Court passed a decree on 30th July, 1976. The amalnama in

favour of the said Niharbala Dutta was impounded and proper fines and fees were paid thereafter. Thereafter proceedings for execution on the basis of the said decree was undertaken being T. Exe No.9 of 1985 and the records were cored under Section 44(2A) of WBEA Act. The respondents accordingly contended that the plaintiffs have no right, title and interest over the suit property. The Trial Court framed six issues and examined. The parties adduced oral and documentary evidence. On the basis of the oral and documentary evidence, the Trial Court arrived at a finding that on perusal of the documentary evidence both RS and CS record of rights shows that the names of one Panchakori Bhattacharya and Panchakori Chatterjee but which R.S. record has been declared to be baseless in T.S. 117 of 1972. Apart from the CS and RS record of rights being Exhibit 2 and 3 the plaintiffs have filed no document to support their evidence in the suit. Exhibit F(1) shows the name of Santosh Kumar Garai, defendant No.1(Ka) (vendee in Exhibit F(2)) in respect of 0.0656 decimals in the suit dag 1311. Exhibit I also shows that the name of Nisith Kumar Pramanik, defendant No.1(kha) (heir of the vendee in Exhibit G) has been recorded in respect of 0.0750 decimals in the suit Dag. On perusal of Exhibit G and G(1), the Trial Court arrived at a finding that the permission was sought by Brojokishore Das, defendant No.1(Ga) to make construction in the suit Dag and which was granted by the Pradhan of the Labpur No.I Gram Panchayat. On the other hand apart from the C.S. and R.S. record of rights being Exhibit 2 and 3 the plaintiffs have filed no document to support their evidence in

the suit. The latest recordings shall prevail over the earlier recordings and carry the presumption of the recorded persons being in possession until such presumption is rebutted by cogent evidence. From the LR record of rights it appears that the defendant No.1(ka) to 1(ga) are in possession and this presumption is no way rebutted by the evidence as led by the plaintiffs. Apart from the record of rights which was altered in the L.R. records, there was no documentary evidence to show that the plaintiffs were in possession at the time of filing of the suit. The plaintiffs being unable to establish that they were in possession of the suit property, the suit was held to be not maintainable under Section 34 of the Specific Relief Act.

On the basis of Exhibit 9(b) and 9(c), the Trial Court arrived at a finding that Panchkori Chatterjee and Panchkori Bhattachargee are the same and identical person. The said report was prepared on the basis of local enquiry and read with other documents and evidence on record the said finding was arrived at. The First Appellate Court relying upon the LR record of rights being Exhibit I, Exhibit F(I) and Exhibit C relating to the suit property being the latest ROR's arrived at a finding that the said exhibits clearly establish the possession of the defendants in respect of the suit property. The names of the defendant Nos.1(ka) to 1(ga) recorded therein is inferred the presumption that they have been in possession over the suit property which, however, could not be rebutted by any cogent evidence by the plaintiffs.

In the light of the aforesaid discussion, The First Appellate Court has affirmed the finding of the learned Trial Court. Both the Trial Court and the First Appellate Court has elaborately discussed the various exhibits and have arrived at a finding that on the basis of the latest available record, it can be safely inferred that the defendants are in possession of the property and they are also able to establish their title. This concurrent findings of facts are based on cogent evidence. The concurrent findings of facts are not to be easily discussed in the second appeal unless it appears to be perverse.

In view of the aforesaid, we do not find any substantial question of law involved in the second appeal and dismissed at the admission stage.

Accordingly, the appeal being SA 71 of 2022 stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)