

DL. September
33. 8, 2022

S.A. 92 of 2021

Smt. Chabirani Bhattacharyya & ors.

Vs.

Subodh Upadhyay & ors.

None appears on behalf of the appellants nor any accommodation is prayed on their behalf. The present appeal was presented on October 27, 2006 without any effort or desire to move the appeal for admission. The matter was appearing in the list since July 25, 2022. The appellants have sufficient notice and knowledge of listing of this matter. However, we propose to decide the question of admission of the second appeal on the basis of the materials available on record.

The present appeal has arisen out of a judgment and decree of affirmance dated July 12, 2006 passed by the learned Civil Judge (Senior Division), First Court at Krishnagar, Nadia, in Title Appeal No. 95 of 2005 arising out of judgment and decree dated April 30, 2005 passed by the learned Civil Judge (Junior Division) at Tehatta, Nadia, in Title Suit No. 422 of 2004, which is a suit for declaration of title and permanent injunction.

The plaintiffs/appellants claimed that 3 decimals of land in plot no. 1264/6392 as described in the schedule to the plaint originally belonged to Roypada Upadhyay, Saktipada and Devendra in equal shares and that their names were duly recorded in the relevant revisional settlement records of right. The said three co-owners amicably and orally partitioned the said property amongst themselves with specific demarcation and, as such, Roypada started

possessing 1 decimal of land with specific demarcation and during his enjoyment of the said 1 decimal of land, he transferred $\frac{1}{2}$ decimal on the southern side adjacent to the pucca road with proper demarcation to the predecessor in interest of the plaintiffs/appellants, namely Subodh Chandra Bhattacharyya, on July 10, 1964 by virtue of a registered deed of *arpannama* and put him in possession thereof. Subodh thereafter raised a kachha construction with tile shed on the said plot of land and filed an application before the concerned settlement office concerned for mutation. Subodh died on November 31, 1981 and, as such, Roypada had no saleable interest to transfer the suit property to any third party. After the death of Roypada, his remaining $\frac{1}{2}$ decimal of land in the suit property devolved upon his heirs and legal representatives, who are the proforma defendants/respondents.

The plaintiffs/appellants alleged that the defendant no. 1/respondent taking advantage of erroneous recording of his name in respect of the suit property was trying to dispossess the plaintiffs/appellants by forcibly entering into the suit property, which instigated the plaintiffs/appellants to institute the present suit.

The defendant no. 1/respondent contested the suit by filing written statement and additional written statement. In the written statement, the defendant no. 1/respondent alleged that during the joint possession and enjoyment by the revisional settlement recorded tenants, one of them, namely, Roypada transferred $\frac{1}{2}$ decimal of land along with other non-suit properties in favour of the predecessor in interest of the plaintiffs/appellants, namely, Subodh, by a registered deed of *arpannama* creating life

interest in his favour. The defendant no. 1/respondent contended that the said Subodh died on July 21, 1968 and, therefore, the said $\frac{1}{2}$ decimal of land in the suit property reverted back to Roypada, who again becoming owner to the extent of $\frac{1}{3}$ rd share in the suit property transferred 1 decimal of land by a registered deed of sale dated April 2, 1969 to the defendant no. 1/respondent and put him in possession thereof. Since then the defendant no. 1/respondent has been in possession of the said land for more than twelve years adversely, openly, uninterruptedly and continuously to the knowledge of all the plaintiffs.

The trial court and more significantly the first appellate court on consideration of the registered deed of arpannama being exhibit-1 and the certified copy thereof being exhibit-D have arrived at a concurrent finding that Roypada created only life interest in respect of $\frac{1}{2}$ decimal of land in favour of the predecessor in interest of the plaintiffs reserving his right in respect of the said $\frac{1}{2}$ decimal of land to the effect that after the death of the predecessor in interest of the plaintiffs the said $\frac{1}{2}$ decimal of land would revert back to Roypada or to his heirs and legal representatives. In view of such clear and unambiguous terms in the arpannama, no right can accrue in favour of the plaintiffs/appellants after the death of Roypada.

The concurrent findings of fact arrived at by both the courts below cannot be said to be perverse and does not call for any interference in the second appeal. Moreover, we do not find any substantial question of law involved in this appeal for which the same is required to be admitted.

The second appeal is, therefore, summarily dismissed

under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Uday Kumar, J.)