Dl. 44. December 22, 2022

S.A.T. 450 of 2012

Akshay Kumar Panja
Vs,
State of West Bengal & ors.

The matter appeared in the warning list on November 29, 2022 with a clear indication that the matter would be transferred to the daily cause list on December 5, 2022 before the regular bench. Since then the matter is appearing in the list. The present appeal is of the year 2012.

Today the appellant is not represented, nor any accommodation is prayed for.

The appeal is defective as it appears from the report of the additional stamp reporter dated September 15, 2012. A co-ordinate bench of this court, on July 27, 2015, upon noticing the defects reported by the additional stamp reporter granted leave to the learned advocate on record for the appellant to rectify those defects and to mention the appeal for enlistment after removal of such defects. The department has reported that the defects pointed out by the additional stamp reporter have not yet been removed.

In absence of the appellants, we have carefully gone through the judgments of both the courts below and the grounds taken by the appellants for considering the question of admission of the present second appeal.

The judgment and decree of affirmance dated June 21, 2012 passed by the learned Additional District Judge, Third Court at Barasat, North 24-Parganas, in Title Appeal No. 130 of 1992 arising out of judgment and decree dated February 12,1992 passed by the learned Munsif, Second Court at Basirhat, North 24-Parganas, in Title Suit No. 335 of 1977, which is a suit for declaration and permanent injunction, is the subject matter of challenge in this appeal.

The trial court did not find any reasonable or cogent ground for accepting the order passed in Ceiling Adjustment Case no. 3 of 1969 under Section 6(I) read with Section 47 of the West Bengal Estate Acquisition Act being not maintainable. The trial court arrived at a finding that there is nothing on record to show that before September 11, 1954 the deceased defendant no. 2 being the donee had acquired any right, title, interest and possession in the lands mentioned in the deed of gift. The said deed was marked as exhibit 8.

There was no indication in the said deed that the original plaintiff gifted the suit property to the original defendant no. 2 in the year 1944. The recital in the said deed used a word “angikar” in bengali on the part of the original plaintiff to donate some property to the original defendant no. 2 before his marriage. The time of maksing such angikar was not mentioned in the deed. It appears that the property was gifted on September 11, 1954, that is, on the date of registration of the said deed.

From the evidence of plaintiff’s witness no. 2 it appears that his father, being the original plaintiff, did not give his eldest daughter, Menoka, any ornament or cash at the time of her marriage. The original plaintiff gave land measuring 23 acres 47 decimals to his eldest daughter at the time of her marriage in the year 1944. However, such oral evidence was not corroborated with any documentary evidence. The learned judges in the trial court as well as the first appellate court disbelieved the explanation of belated registration as they were of the opinion that such explanation of belated registration was on some fictitious grounds. The trial court as well as the first appellate court had relied upon Section 5A of the West Bengal Estate Acquisition Act wherein there is a specific bar with regard to transfer of any land by any intermediary in between May 5, 1953 and the date of vesting, if in the opinion of the State Government there are prima facie reasons for believing that such transfer was not bona fide.

It appears from the judgments of the trial court as well as the first appellate court that the certified copy of the Ceiling Adjustment Case No. 3 of 1969 was not filed before the trial court. The order passed by the learned District Judge in Misc. Case No. 8 of 1972 and the order passed by this court in C.R. 138(a) of 1970 were also not filed before the trial court. The first appellate court rightly observed that in absence of the said orders and the documents, it cannot be held that the order passed in the said proceeding being Ceiling Adjustment Case No. 3 of 1969 would operate as res judicata in the present suit for declaration and permanent injunction, where the claim is based on a deed of gift, which according to the plaintiff/appellant, has attained finality by reason of its recognition by the Revenue Officer in the earlier proceeding.

It reveals from the judgments of both the courts below that exhibit 8 would show that the donor had promised to gift some property to the donee prior to the marriage of the donor’s daughter with the donee and that to fulfill the promise he gifted the property by executing the deed. There was no such recital that actual gift had already been made in the year 1944. The trial court as well as the first appellate court have refered to relevant recitals in the deed which would show that before September 11, 1954 the defendant no. 2 being the donee had acquired no title and possession in the lands mentioned in the deed. It has been rightly pointed out by the trial court as well as the first appellate court that even if it is assumed for the sake of argument without admitting that there was an oral gift in the year 1944, such gift could not be permitted in view of Section 123 of the Transfer of Property Act. Hence, the transfer of 23.47 acres of land made by Manmotha Nath Panja in favour of the deceased defendant no. 6 could be held to be legal and valid only on September 11, 1954. In the aforesaid context, the trial court as well as the first appellate court considered the plea of res judicata.

The contention of the plaintiff/appellant was that the order of vesting in Ceiling Adjustment Case No. 3 of 1969 under Section 6(I) read with Section 47 of the West Bengal Estate Acquisition Act was barred by the principle of res judicata since the Revenue Office which is a court of limited jurisdiction had earlier in a 5a) proceeding case held the transfer as bona fide with the observation that it was an actual transfer of 1944.

The trial court held that since there could not have been any actual transfer prior to September 11, 1954, when the registered deed of gift was executed, recognition of such transaction in the said proceeding by the Revenue Officer could not operate as res judicata. The Revenue Officer decided the alleged transaction of gift in the year 1944 disregarding the provisions of law. In any event, the Revenue Officer is not a court of law and such finding in contrary to the provisions of law is not enforceable unless it is registered and accepted by the donee.

In our view, the findings arrived at by both the courts below do not suffer from any perversity. As such, we do not find any reason to interfere with the concurrent findings of fact arrived at by both the courts below.

Having found no substantial question of law involved in this appeal for which the same is required to be admitted, the same is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

dns **(Uday Kumar, J.)** **(Soumen Sen, J.)**