

DL. February
6. 14, 2022

S.A. 33 of 2021

Sarbojanin Sree Sree Sitala Puja Committee

Vs.

Sri Tulshi Charan Naskar

Mr. Pinaki Ranjan Mitra,
...for the appellant.

The appellant is aggrieved by the judgment and decree dated September 2, 2019 passed by the learned Additional District Judge, First Court at Howrah, in Title Appeal No. 83 of 2017 reversing the judgment and decree dated May 31, 2017 passed by the learned Civil Judge (Junior Division), Sixth Court at Howrah, in Title Suit No. 47 of 2005 filed by the plaintiff/appellant seeking declaration and injunction.

The plaintiff/appellant is an unregistered organization claimed to have support of the people of Anandanagar. It is claimed that the suit property is being used as *debasthan* for last 50 (fifty) years by the villagers of Anandanagar and that the villagers contributed money for the development of the temple. The record of rights shows that the property in suit is a public debasthan of Sitala Mandir for the use of Hindu community. It is further claimed that the defendant/respondent had no right, title and interest over the property in suit and that the defendant was creating disturbance to the villagers in performing their religious activities.

The defendant, in his written statement, has alleged that the land revenue record of rights was wrongfully made in the name of Sitala Mandir by some miscreants and neither the defendant nor the predecessor-in-interest of the defendant has gifted or sold out any portion of the property in suit by way of any instrument. It was alleged that the local people were occasionally allowed to worship the deity and that the defendant had taken steps to rectify the wrong recording in the land revenue record of rights.

It appears from the impugned judgement that the defendant had preferred a earlier suit being Title Suit No. 57 of 1995 for declaration and injunction in respect of the property in suit before the learned Civil Judge (Junior Division), Sixth Court at Howrah and obtained a decree of declaration in respect of the property in suit.

The trial court, after recording that neither the plaintiff nor the defendant produced any document in support of their respective title, decreed the suit on the basis of the finally published land revenue record of rights, particularly, on the basis of the entry in the comment section wherein it has been described as a temple to be used by the public.

The lower appellate court reversed the said judgment and decree on the ground that the trial court erred in not taking into consideration the judgment and decree passed in Title Suit No. 57 of 1995 and also giving not much emphasize on the finally

published record of rights wherein the name of the defendant appears as raiyat.

It is significant to mention that the suit was filed in a representative capacity. After paper publication, none had come to join as plaintiff. It is submitted that some of the members of the unregistered organisation were defendants in the earlier suit. Those persons were not named in the present suit.

Be that as it may, from the earlier proceeding, it appears that one Tulshi Naskar filed a suit being Title Suit No. 57 of 1995 against Ayodhya Naskar and others mentioning that the suit property belonged to his predecessor, namely, Prasanna Kumar Naskar, who died leaving behind his widow and onely son, Surendra Nath Naskar. The widow of Prasanna Naskar, namely, Brijbala Devi, established the deity of Sitala Maa in the property in suit. In the cadastral settlement record of rights, the property in suit has been recorded as *debasthan*, but in the revisional settlement record of rights it has been recorded erroneously. Though it is a private deity, Brijbala Devi allowed the villagers to worship the deity. In the earlier proceeding, the right, title and interest of the defendant were not established and the decree passed in the said suit was never challenged. The said decree is binding on the members of the unregistered society as it is claimed that Ayodhya Naskar and others were the defendants and similar claims made by the defendants cannot be accepted by the trial court. Although the earlier decree was passed ex parte, we declare that the deity in the

suit property belongs to Naskar family. The said decree remains valid unless it is set aside.

There is also a discrepancy in the description of the debasthan as recorded in the record of rights. Though the appellant has heavily relied upon entry in the latest record of rights, but that entry in the comment portion is also not in the name of the appellant/committee but it recorded as Hindu Sitala temple for the use of public. The appellants are not representing Hindu public at large but they are simply an unregistered Puja Committee. The aforesaid decree is binding on the members of the unregistered association so long it is set aside. The relevancy and the evidentiary value of the earlier decree was not considered by the trial court in the proper perspective. The plaintiff has also not taken any step for correction of the last published record of rights.

A civil suit is required to be decided on preponderance of evidence. Preponderance of evidence suggests that the plaintiff has right and interest in the suit property in view of the last published record of rights which described him as raiyat and suit plot as his own plot. In a suit the court is required to accept one of the versions over the others on the basis of the cogent evidence has evidentiary value.

On the basis of the evidence of record, it cannot be said that the lower appellate court has committed any error in the eye of law in not accepting the plaintiff's case taking into consideration the

aforesaid facts.

In view of the aforesaid, 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.

In view of dismissal of the appeal, the connected application for appropriate order filed under CAN 12485 of 2019 becomes infructuous and the same is also dismissed.

There will be no order as to costs.

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)

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