

Item-14. 06-12-2022

sg Ct. 8

SA 109 of 2022

Biswajit Mondal & Ors.
Versus
Mita Mukherjee & Ors.

Mr. D.N. Chatterjee, Adv.
Ms. Oisani Mukherjee, Adv.
...for the appellants

The appeal is arising out of the judgment and decree dated 4th June, 2015 passed by the learned Judge, Special Court-Cum-Additional District Judge, Durgapur affirming the judgment and decree dated 3rd February, 2001 passed by the learned Civil Judge (Senior Division), Durgapur in Title Suit No. 36 of 1997.

The learned Trial Judge decreed the suit on contest. The decree declares the right, title and interest of the plaintiffs in respect of the plot 1045 to the extent of 20½ cents. The defendants have no right, title and interest over K-1 schedule property. The defendants have right, title and interest over 6½ cents of land only as per Ka-2 scheduled property.

Mr. D.N. Chatterjee, learned Counsel appearing on behalf of the appellant submits that the appeal may be admitted on the following substantial questions of law:

- I. Whether the learned Courts below substantially erred in law in not observing that the plaintiffs had no possession over the suit property from 1967 and the defendants or their predecessor-in-interest were in absolute physical possession of 11½ decimal of land in addition to 26½ decimals of land adversely to the knowledge of all concerned?

- II. Whether the learned Courts below substantially erred in law in directing the issue of adverse possession without actually ascertaining the factum of physical possession?
- III. Whether the learned Courts below substantially erred in law by observing that the sale deed of 1942 was a purported one and since Kaninidasi or her daughter Bimala did not transfer their shares to Radharaman the plaintiff or their predecessor in interest had no title or interest in the suit property as claimed by them?

Briefly stated: one Sitanath Pal and Biswanath Pal were the original owners in the property described in schedule Ka to the plaint. After the death of Biswanath Pal, Sitanath got his share and became 16 anas share in respect of Ka schedule property menacing thereby, he became the absolute owner. After the death of Sitanath Pal, his only son Radha Raman Pal became the full owner. Radha Raman transferred his share in Ka schedule property to the predecessor-in-interest of the plaintiffs, Surendranath Mukherjee, by a registered deed dated 28.09.1942. One Kamini Dasi filed T.S. 212 of 1949 before the Court of learned Munsif, 2nd Court at Asansol. The suit was decreed in terms of solemana. The said decree was not binding upon the plaintiffs as they were not parties to the suit. In terms of the said solenama, Radha Raman and Kamini got their respective specified portion with the share of 20½ cent each. The plaintiffs contended that they have been possessing the Ka(1) schedule property as per

decree in T.S. 94 of 1963. Kamini Dasi, the predecessor-in-interest of the defendants, transferred her property to one Kshanta Bala Dasi on 1st March, 1963. The State of West Bengal acquired 14 cents of land belonging to the predecessor-in-interest of the defendants. The defendants have only right, title and interest over 6½ cents of land only. As the title of the plaintiffs has been clouded, the plaintiffs filed the instant suit for declaration and permanent injunction.

The defendant nos. 1 to 5 contested the suit and filed their written statement. In their written statement, they alleged that the plaintiffs have no possession over the suit property from 1967. The defendants further alleged that the suit property is to the extent of 53 decimals and their predecessor-in-interest had right, title, interest and possession in the suit property to the extent of 26½ decimal of land. Kamini Dasi executed a deed of gift in favour of one Bijoy Mondal, the father of the defendants and since then they have been possessing the same. The father of the defendants also transferred a portion of land to the defendant no.5. The defendants alleged that Kshanta Bala Dasi possessed 11½ decimals of land in the suit plot in addition to her allotted share to the extent of 26 ½ decimals of land adversely to the knowledge of all concerned and she has been cultivating the said land.

On the basis of the pleadings, the Trial Court framed seven issues. The Trial Court recorded that the defendants claimed ownership by way of adverse possession.

Admittedly, the suit property previously belongs to one Sitanath Pal and Biswanath Pal. Biswanath Pal died leaving behind him his daughter Bimala and wife Kamini Dasi. Sitanath

died leaving behind him his only son Radha Raman Pal.

Before the Trial Court, the plaintiffs contended that Sitanath Pal transferred his 16 anna interest in favour of the predecessor-in-interest of the plaintiffs, Surendra Nath Mukherjee, by a registered deed dated 28th September, 1942. The defendants, on the other hand, contended that their grandmother, Kamini Dasi inherited half share from her husband, Biswanath Pal, in respect of the suit property and in addition to it, they have been in possession of 11½ decimal of land belonging to Radha Raman Pal for a long time.

However, the deed of 1942 was not produced by the plaintiffs. The plaintiffs challenged the decree in T.S. 212 of 1949 filed by Kamini Dasi and admitted the factum of the final decree in T.S. 212 of 1949. The most crucial document, as observed by the learned Trial Court, is Exhibit-2 i.e. the final decree in T.S. 212 of 1949. The recital in Exhibit-2 established that the suit property was to the extent of 41 decimals of land and the suit property was partitioned amicably with equal share between Kamini Dasi and Radha Raman Pal. The plaintiffs have admitted the contents of the said document and they have been acting all along on the basis of the said document. The final decree in T.S. 212 of 1949 is binding upon the parties to the suit and they have no right to challenge the said document. The claim of the defendants was that the suit property is to the extent of 53 cents of land in question and, accordingly, the defendant Kamini Dasi acquired interest over the suit plot to the extent of 26½ decimal of land. This contention is contrary to the recitals made in Exhibit-2 i.e. the final decree.

Whether the suit plot is to the extent of 53 cents or 38 cents

has been set at rest in the final decree proceeding that was marked as Exhibit-2. Moreover, DW-1, in his deposition, has stated that by virtue of the decree in T.S. 212 of 1949, Radha Raman Pal and Kamini Dasi got 20½ decimals of land in the suit property. Admittedly, 14 anas of land have been acquired by the State, belonging to the defendants and the said defendants are also receiving compensation from the authorities concerned in respect of such acquisition.

In deciding the issue regarding acquisition of title of the defendants in the suit by way of adverse possession, the learned Trial Court has relied upon the final decree which would clearly show that Kamini, at the relevant time, was the owner of only 20½ cents and accordingly, any transfer beyond the said share is void, as she had no right at all in respect of the balance portion of the land. As rightly observed by the learned Trial Court, the deed dated 27th February, 1989 showing transfer of suit plot to the defendant no.5 by the father of the defendants has no legal sanction at all as late Bijoy had no right to transfer the said land to defendant no.5 beyond the actual quantum of land.

The First Appellate Court noticed that the defendants in the suit have taken a defence that they are possessing the suit property to the extent of 11½ decimals of land adversely against the interest of the real owner. From Exhibit-1, CSROR, the extent of the suit property is 53 decimals but from Exhibit-6, RSROR, the extent of the suit property has been shown as 38 decimals whereas in TS 212 of 1949 wherein Kamini Dasi and Radharaman Pal, the heirs of Biswnath and Sitanath respectively, admitted that the plot no. 1045 of Mouza Birbhanpur was 41 decimals after 1949 revisional

survey was came into operation. In plot no. 1045, Kamini Dasi admitted that she has a possession to the extent of half of 41 decimals which is on the eastern side of the said plot while Radharaman Pal admitted that he was in possession to the half of 41 decimals which was on the western side of the said plot. As the TS 212 of 1949 is the base point to the extent of plot no. 1045 of Mouza Birbhanpur.

There is another interesting feature that the First Appellate Court has taken notice off. DW-1, Tapan Kumar Mondal admitted that they have filed objections against the LA Case and the said case has been disposed of and money has been awarded in their name and they have applied for the withdrawal of the awarded money. Naturally, from the very version of the defendant, Tapan Kumar Mondal, it is clear that 14 decimals of land which has been acquired by the Govt. in the year 1970, they have received the awarded amount. DW-1 also admitted in cross-examination that they do not file any appeal against the decree passed in TS 212 of 1949. In TS 212 of 1949, a share has been allotted to Kamini Dasi to the extent of 20 ½ decimals out of 41 decimals in plot no. 1045 of Mouza Birbhanpur, which is on the eastern side of the said land while the present plaintiffs have acquired title.

On the basis of the documentary evidence on record that the quantum of land mentioned in the registered deed dated 1st March, 1967 is originally the final decree in TS 212 of 1949 and having regard to the fact that the defendants have only acquired 20½ decimals of land out of which 14 decimals of land was acquired by the Government and according to the evidence of DW-1, the defendants have received compensation. Moreover, there was no

evidence on record to show that the defendants were in possession of 26 ½ decimals since 1942 with the clear knowledge of the other co-sharers of the plot no. 1045.

In our view, the First Appellate Court rightly did not rely upon the said evidence as it is palpable untrustworthy. The second appeal cannot be admitted provided it involves substantial question of law.

The concurrent finding of facts with regard to the possession of the parties and their claims based on oral and documentary evidence arriving at a proper appreciation of law and fact, does not call for any interference.

The second appeal is dismissed. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)