

15.12.2022
SL No.23
Court No.8
(gc)

SAT 2642 of 2007

**Kashinath Das
Vs.
Banshori Mohan Mondal & Anr.**

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular Bench on 5th December, 2022. Since then the matter is appearing in the list. The second appeal is of the year 2007. The appellant has due notice of the matter. The appellant is not represented.

The defects notified by the Additional Stamp Reporter in its report dated 4th February, 2008 have not been removed. It appears that the appellant is not interested to proceed with the matter. However, we proceed with the matter and have carefully read the judgments of both the Courts below along with the memo of appeal to find out if the second appeal involves any substantial question of law.

The appellate decree dated 10th August, 2007 affirming the judgment and decree dated 2nd January, 2004 passed by the learned Civil Judge (Junior Division) is the subject matter of challenge in this second appeal. Kashinath Das, filed the suit for declaration of title and permanent injunction. According to the plaintiff, his grandmother, Smt. Swetbarani Dasi, was the original

owner of the suit property. During her lifetime, Swetbarani transferred the suit property in favour of the plaintiff and as the plaintiff was minor, his father, Upendranath Das took possession of the suit property on his behalf and he used to look after the said property on behalf of his son. After attaining the majority, the plaintiff took possession of the suit property from his father and thereafter started cultivating the suit property and after some time he entrusted the defendant to look after the cultivation. The defendant taking advantage of such innocence declared himself as the owner of the suit property and also claimed that the father of the plaintiff has sold the suit property in his favour. The plaintiff contended that neither the defendant nor his father had or has any right, title and interest over the suit property and any deed purported to have been executed by his father is not binding and is fabricated. The defendant No.1 contested the suit in which he has disclosed the various deeds by which he became the owner of the property. It was stated that after Kashinath attained majority, the suit property was sold in favour of the defendant and since then the defendant is in occupation of the property in question. The defendant No.2 has also filed an affidavit, in which he has stated about the subsequent transfer in his favour by the defendant No.1 on 3rd July, 1991. The Trial Court framed 12 issues. The suit was dismissed on the ground of vagueness of the suit property. The plaintiff failed to identify the property over

which he claimed ownership. On the question of limitation, the learned Trial Judge held that at the time of institution of the suit, the plaintiff was 39 years' old and it was filed long after he became major. The suit is barred under Section 16(a) of the Limitation Act, 1963.

The suit was also held to be barred under Section 34 of the Specific Relief Act as the plaintiff was admittedly out of possession and he did not claim for restoration of possession. The appellant/plaintiff preferred an appeal before the First Appellate Court. The respondents have also filed a cross-objection with regard to the findings of the Trial Court in respect of Issue Nos.7, 8 and 10. The said issues are reproduced below:-

- “7. Is the defendant by purchase of suit property?*
- 8. Is the defendant by adverse possession acquire title for more than 12 years?*
- 10. Has the plaintiff any right, title and possession over the suit properties?”*

The learned Trial Court in answering to the issue No.8 had held that since neither the parties have pressed this issue, so the issue needs to be decided in favour of the plaintiff. Insofar as the issue Nos.7 and 10 are concerned, the learned Trial Court held that since the father of the plaintiff did not take permission of the learned District Judge before such transfer who is not a valid transfer and the plaintiff has right, title and interest in respect of the suit properties, the respondents before the First Appellate Court has urged that the said findings

are suffering from self-contradiction and the learned Court below ought to have held that the transfer of the suit property of the appellant by his father was for legal necessity and the same was a valid transfer. The First Appellate Court disposed of the appeal and the cross-objection by allowing the cross-objection and dismissing the appeal on merits. In arriving at such finding, the First Appellate Court had taken into consideration that Upendranath purchased the said properties in the name of his two minor sons on 20.07.1957 and thereafter on 14.11.1969 executed two registered sale deeds in favour of the defendant No.1 on behalf of the minors and handed over possession of the property in favour of the said defendant No.1. The appellant, however, could not identify the land over which he claimed ownership. During cross-examination of the witnesses on behalf of the plaintiffs, it was revealed that the defendant No.2 had been possessing plot No.1403. However, the Appellate Court principally proceeded on the basis of Article 60 of the Limitation Act as it was quite clear from the evidence that the plaintiff after attaining the majority within a period of three years did not challenge the sale deeds after they became aware of the possession of the defendants in the suit property. Exhibit-C has clearly established that the suit property was transferred for legal necessity when the appellant was minor. However, under Section 8(3) of the Guardian and Wards Act, any such transfer made by the natural guardian, if a minor can be treated as a

voidable transfer and it can be set aside provided a challenge is thrown to such deed within a period of three years from the date of attaining the majority by the ward. The appellant was admittedly aged about 39 years at the time of institution of the suit. He could not offer any explanation for such delay and could not produce any evidence to show that he became aware of the sale deed three years immediately before the filing of the suit. The L.R.R.O.R., rent receipts and other evidence on record are clear examples of possession by the respondents over the suit property for a considerable period of time.

The concurrent findings of facts are based on cogent evidence. We do not find any reason to admit the second appeal as it does not involve any substantial question of law.

Accordingly, the second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)