

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Ajoy Kumar Mukherjee

SAT 152 of 2020

With

CAN 1 of 2021

CAN 2 of 2021

Sudhangshu Sahoo

Vs.

Kalipada Sahoo

(Through Video Conference)

For the Appellant : Mr. Sk. Rejaul Alam, Adv.

For the Respondent : Mr. Mrinal kanti Ghosh, Adv

Order dated : 21.02.2022

Ajoy Kumar Mukherjee, J.(oral): Being aggrieved and dissatisfied with the judgment and decree dated 30th June 2020 passed by the learned District Judge, Paschim Medinipur in the other appeal No. 74/2018, present appeal has been preferred by the appellant. By the impugned judgment learned First Appellate Court was pleased to dismiss the appeal and affirm the judgment and decree dated 7th December, 2017 passed by the Learned Civil Judge (Junior Division), 3rd Court, Paschim Medinipur in connection with Other Suit being No. 151/2017.

Plaintiffs case before the Trial Court in a nutshell is that suit property originally belong to Sisir Kumar Sahoo who transferred the suit property by way of registered deed of gift in favour of his wife Gita Rani Sahoo on 13.03.1991 and the name of said transferee Gita Rani Sahoo duly recorded in the L.R. Record of Rights and she also paid government rents. Said Gita Rani Sahoo is mother of both plaintiff and defendant. In 1997-1998 said Gita Rani Sahoo made addition alteration of the property. Defendant is running a grocery shop in the suit property subsequently said Gita Rani Sahoo had transferred suit property in favour of plaintiff on 12.12.2001 by a registered deed of gift Plaintiff use to run a hardware shop. Business of plaintiff has been flourished in the meantime and his shop in the suit house became insufficient to continue his business. The period of 3 years of license of the defendant has been expired in the meantime and on 25.05.2007 plaintiff terminated license granted to the defendants and asked him to vacate the said premises within one month. However, the defendant refused to vacate the suit property and as such said suit was filed.

Defendants case on the contrary is that Sisir Kumar Sahoo was medically unfit for 3 to 4 years prior to his death and he was not in a position to execute deed of gift in favour of his wife Gita Rani Sahoo and further case of the defendant is that mother of plaintiff fraudulently executed deed of gift in favour of plaintiff and for which defendant/appellant has filed a separate suit being T.S. 234/2014 for cancellation of said deed before the Civil Judge (Junior Division), 3rd

Court, Paschim Medinipur which is still pending. Accordingly, defendants contention is that deed executed by Sisir Kuamr Sahoo in favour of Gita Rani Sahoo is void and illegal and deed was not executed voluntarily and said deed of gift never acted upon. Moreover, the subsequent deed executed by Gita Rani Sahoo in favour of plaintiff is also a void deed. In addition to that defendant is running business in the suit premises since 1990 and therefore he has acquired title in the suit property by way of adverse possession also and accordingly he prayed for dismissal of the suit.

The Trial Court has framed five issues during trial. Original registered deed of gift in favour of plaintiff for the year 2001 is marked as Exhibit 5. Plaintiff himself deposed as PW1 and he has also brought his mother Gita Rani Sahoo as PW2 and another witness Soumen Pal has deposed on behalf of the plaintiff as PW3. On the contrary defendant has brought as many as Five witnesses and he has filed miscellaneous receipt and fees paid to Municipality as well as certificate of enlistment, electric bill etc which are marked as exhibits on behalf of defendant.

The Learned Trial Court after considering the evidence and documents as submitted by both the parties came to the finding that defendant has miserably failed to prove his case of family settlement or that he has acquired title in the suit property by way of adverse possession. On the contrary plaintiff has clearly proved his right title in the suit property. Moreover Exhibit 5, i.e. the deed of gift by which

plaintiff acquired title in the suit property has not been declared as null and void by any competent court of law and the license granted to defendant has expired by lapse of time and as such learned trial court passed decree of declaration and recovery of possession by his judgment dated 07.12.2017 in O.S.. No. 195/2014.

Being aggrieved and dissatisfied with the said judgment dated 07.12.2017 defendants/appellant preferred the first appeal which came up for hearing before the additional District Judge Special Court Paschim Medinipur, being Other Appeal No. 74 of 2018. The Learned First Appellate Court by its judgment dated 30.06.2020 was pleased to dismiss the appeal without cost and affirmed the judgment and decree dated 07.12.2017 passed in O.S. No. 195/2014 on the ground that DW1 in his cross examination has admitted that the suit property belonged to his father Sisir Kumar Sahoo and Municipal record stands in his name and DW1 also admitted his mother's signature on the deed of gift executed by his mother in favour of plaintiff. Moreover, doner Gita Rani Sahoo deposed as PW2 and she has stated that she voluntarily gifted the suit property to his elder son that is the plaintiff where the defendant is running his grocery shop . Moreover, DW1 in his cross examination admitted that there is no question of adverse possession in the suit property and therefore defendant did not support his alternative plea of adverse possession. There is no evidence that Sisir Kumar Sahoo had relinquished his title in respect of plot No. 303 and 304 by way of oral family settlement. There is not material to show

that the oral family settlement was ever acted upon and on the contrary it emerges from the evidence of plaintiff that the statement of plaintiff has been corroborated by exhibit 1,2, 4 and 5 and on the other hand evidence of DW1 appears to have not been supported by any document or evidence. Accordingly he dismissed the appeal.

Learned Counsel for the appellant argued that by way of oral statement, Sisir Kumar Sahoo had relinquished his share in the property and as such Sisir Kumar Sahoo had no capacity to execute the deed of gift in favour of his wife Gita Rani Sahoo and as such Gita Rani Sahoo had no capacity to execute the deed of gift in favour of plaintiff and to prove the same he has filed a separate suit for cancellation of said deed of gift. Learned Counsel for the appellant raised the plea that the defendant/appellant has become owner of the suit property by way of family settlement long back and moreover he has perfected his title by way of adverse possession as he is in possession of the suit property since 1990.

Needles to say that where the question of title is involved and plaintiff has prima facie title by dint of exhibit 5 to the knowledge of the defendant who is in possession of the property, what defendant is expected to prove is his right to possess the property in exercise of any right, arising out of a transfer of interest either inter vivos or testamentary or by adverse possession. (See **Kumaresh Majumder v. Binapani Sarkar** reported in **2001(2) CLJ 475** and **Tarumoni Mondal**

And Ors. v. Prafulla Kumar Mondal And Ors. reported in **2006 (3) CHN 1.)**

If no such transfer of interest is proved, the basis of his possession must be permissive. Here in the present case defendant /appellant contended that long back oral family settlement took place by which he acquired title in the suit property and as such Gita Rani's husband Sisir Kumar Sahoo had no right to execute the deed of gift in favour of Gita Rani Sahoo. For the said reason Gita Rani Sahoo acquired no right to execute deed of gift in favour of plaintiff. Defendant /appellant has filed a separate suit for cancellation of deed of gift which is pending.

Said deed of gift by Sisir Kumar Sahoo and subsequently by Gita Rani Sahoo in favour of plaintiff had not been declared as null void by any competent court of law till this date. Defendant/appellant has also miserably failed to prove that there was any oral family statement by which he has acquired title in the suit property. Transfer of share by way of such oral alleged family settlement in respect of property valued more than Rs. 100/- is not permissible in law. The alternative contention taken by defendant/appellant, that he has perfected his title by way of adverse possession has also not been proved and on the contrary during the evidence he has relinquished his claim of acquisition of title by way of adverse possession. Furthermore, where in a suit, defendant claimed himself to be the owner over disputed property on the ground of family settlement, the alternative plea by the

defendant that he had perfected his title by adverse possession, cannot be allowed. A person who traces his possession to lawful title can never become an owner by adverse possession.

In view of above we are not inclined to admit the second appeal in view of the fact that no question of law far from substantial question of law involved in the present context.

Accordingly the prayer for admission of second appeal is dismissed.

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)