

10 21.3.2022
Sc Ct. no.8

S.A. 76 OF 2020

Sk. Khoda Box

Vs.

Lokeman Hakim Mondal alias
Lokman @ Laxman

Mr. Anit Rakshit
Mr. Sailendu Sekhar Bayerd.

...For the Appellant/
Defendant

Mr. Ayan Banerjee
Mr. Suman Banerjee.

....For the Respondent/
Plaintiff

This second appeal has come up for admission.

The appellant is aggrieved by the judgment and decree dated 21st June, 2019 passed by the learned Additional District & Sessions Judge, Chandernagore affirming the judgment and decree dated 22nd March, 2016 passed by the learned Civil Judge (Jr. Div.), Additional Court, Chandernagore in Title Suit No.108 of 2015 (New)/ Title Suit No. 130 of 2009 (Old).

Mr. Anit Rakshit, learned counsel appearing on behalf of the appellant submits that the second appeal is required to be admitted on the ground that both the courts below have failed to take into consideration that the issue raised by the appellant is required to be decided by the competent authority under Section 21(3) of the West Bengal Land Reforms Act, 1955.

In order to appreciate the arguments advanced by Mr. Rakshit, it is necessary to briefly state the defenses raised by the appellant before the trial court. The appellant was the defendant in a suit filed by the opposite party for declaration of title and injunction.

The plaintiff in the suit has alleged that original plot no. 190 comprising of an area of 36 decimals belonged to the father of the plaintiff viz. Sk. Jahad Box. Sk. Jahad Box executed and registered the Deed of Gift on 17th March, 1975 in favour of the plaintiff. By virtue of the said Deed of Gift, the plaintiff became the owner and was in possession of the entire plot.

A few years ago, D.V.C acquired 4 decimals of land in plot no. 190. A canal was made on the said plot. In L.R. Record of Rights two separate plots were mentioned viz. plot no. 190 in the Western side of the canal having an area of 16 decimals and plot no. 190/1350 having an area of 6 decimals in the Eastern side of the canal.

The plaintiff, due to financial need, decided to sell 16 decimals of land situated in the Western side of plot no. 190. Accordingly, he sold such portion of the land in favour of different purchasers, keeping remaining 1 decimal of land in the plot no.190. In the month of October, 2008, he decided to sell remaining portion as he was in financial stringency and the defendant offered to purchase the said 1 decimal of land in plot no. 190 and the pond (doba) in plot no. 2921 at a consideration of

Rs.8000/- for the land and Rs.3000/- for the pond (doba). On instruction of the defendant, the plaintiff executed and registered the Sale Deed after receiving a sum of Rs.11000/-. The defendant paid Rs.11,000/- but it is alleged by the defendant that in collusion with the deed writer and witnesses the plaintiff has written the dag number as 190 in place of dag no. 190/1350 and the total area has been written as two (2) decimals land in place of six (6) decimals of land in the said deed of sale dated 17.10.2008, which is absolutely false. Following the execution of the said Deed the defendant was put into possession in plot no.190. On 12th November, 2009 the defendant threatened to dispossess the plaintiff in respect of the plot no.190/1350 situated in the Western side of the D.V.C. canal describing the 'A' Schedule property in the plaint.

The defendant filed a written statement along with the counter-claim. It is alleged that the defendant is an illiterate and poor farmer. In the year 1994 the plaintiff inducted the defendant as a 'bargadar' in respect of 6 decimal of land in the plot no. 190/1350. Since the defendant has been cultivating the same sharing crops, on 30th March, 1996 the plaintiff wanted to sell the said property and in presence of the local persons of the village, 6 decimals of land within plot no.190/1350 was fixed at Rs.28,000/- and the price of the pond (doba) was fixed at Rs.2000/-. The defendant paid Rs.30,000/- to

the plaintiff. The defendant, however, did not execute the title deed. In the meantime, when the defendant improved the said land the plaintiff being jealous to the improvement made by the defendant, demanded further money. The defendant in the counter-claim has alleged that the plaintiff through the deed writer and the witnesses erroneously described the property sold as two (2) decimal in plot no. 190 in Schedule of the deed in the year 1996. The plaintiff had no property measuring 1 decimal in the plot no.190 at the relevant time. The defendant, however, alleged that he did not purchase 1 decimal of land in the Western side of D.V.C. canal.

In view of the fact that the only issue raised before us was that both the courts below having regard to the pleadings, ought to have referred the matter to the competent authority for consideration under Section 21(3) of the West Bengal Land Reforms Act, 1955, we referred to the pleadings briefly to find out whether the dispute raised is at all required to be adjudicated by the competent authority. For better understanding of the matter, we set out Section 21 (3) of the West Bengal Land Reforms Act, 1955.

“S.21(3) If any question as to whether a person is or is not a bargadar arises in the course of any suit case, appeal or other proceedings before any Civil or Criminal Courts, the Court shall refer it to the officer or the authority mentioned in sub-section (1) of section

18 for decision and such Court shall dispose of the suit, case, appeal or other proceedings in accordance with the decision communicated to it by the officer or authority mentioned in sub-section (1) of section 18 to whom the question was referred.”

If the defendant would have taken the plea that the property has been sold to some other person but he is cultivating the land as a ‘bargadar’ and as such he has a preferential right then the question would have been otherwise and in that case a genuine question regarding bargadarship would have been raised before the Court to decide the question of preferential right in which case the matter should have been adjudicated by the competent authority under Section 21(3) of the West Bengal Land Reforms Act, 1955. But no such question has been raised in the present context. The real dispute is whether ‘A’ Schedule property was a plot sold to the defendant and no question of preferential right has been raised in the present context.

It is not in dispute between the parties that defendant was cultivating as a ‘bargadar’. The real disputes which have emerged with regard to the description of the plot and the consideration price with regard to ‘A’ Schedule property in the concerned deed. In view of the fact that the said adjudication does not call for any question as to whether a person is or is not a ‘bargadar”, reference under Section 21(3) of the West

Bengal Land Reforms Act, 1955, in our considered opinion, cannot have any manner of application. In view thereof, since no other issues have been argued before us and we find that there are concurrent findings of fact by both the courts below with regard to the declaration of ownership of 'A' Schedule property in favour of the plaintiff, we do not find any reason to admit the second appeal.

Accordingly, the second appeal is not admitted and, accordingly, dismissed.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)