

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 91 of 2019
CAN 2 of 2017 (CAN 6499 of 2017)

DURGA RANI PANDIT
VS.
SIDESHWAR MONDAL & ORS.

For the Appellant	: Mr. Gopal Ch. Ghosh, Adv. Mr. Soumen Kumar Dutta, Adv. Mr. Sabyasachi Bhattacharjee, Adv. Mr. Sayan Sengupta, Adv.
For the Opposite Parties	: Mr. Anjan Bhattacharya, Adv. Ms. Anita Shaw, Adv. Ms. Salma Sultana, Adv.
Hearing concluded on	: 25 th July, 2023
Judgement on	: 27 th July, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgement and decree passed by learned Additional District, Fast Track 2nd Court, Contai, Purba Medinipur in Title Appeal No. 4 of 2016, thereby affirming the judgement and decree dated 30th August, 2014 passed by learned 1st Court, Additional Civil Judge, Junior Division, Contai in Title Suit No. 25 of 2012.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.
3. Briefly stated, the appeal relates to proper perspective, it is expedient to have a brief fact of the case, Sideshwar Mondal and Smt. Kajal

Mondal filed a suit for declaration and permanent injunction in respect of property described in schedule 'Ka' of the plaint against Smt. Durga Rani Pandit contending, *inter alia*, that 'Ka' schedule property originally owned by one Manas Kumar Pandit who sold and transferred the same on 3rd December, 2007 to Bhanu Chandra Das and 10th April, 2010 to the proforma-respondent no. 2, Bhanu Chandra Das. Said Bhanu Chandra Das on 8th July, 2011 executed the sale deed transferring thereby 55 decimal of land out of 'Ka' schedule property in favour of the plaintiff no. 1 and on 13th July, 2011 he sold and transferred 21.5 decimal of land in favour of the plaintiff no. 2 but the deeds were registered on 2nd November, 2011 and 4th November, 2011 respectively. Thus, the plaintiffs acquired right title interest and possession in respect of the said property. The plaintiffs further stated that as the non-judicial stamp papers, required to prepare the deeds were not available with the stamp vendor of jurisdictional Sub-Registrar office, they had to procure it from the stamp vendors, working far away from the residence of the plaintiffs.

4. However, after the execute of the deeds, the proforma-defendant since had to remain away from home and it was not possible for the plaintiffs to present the title deeds for registration till 13th July, 2011. On 21st November, 2011 when the plaintiffs wanted to encircle the land with *isle*, the defendant no. 1 denied their title in respect of 'Ka' schedule property and threatened to dispossess the plaintiffs from the suit property claiming *inter alia* to have acquired ownership in respect of the suit property by purchase.

5. This incident prompted the plaintiff to file this suit which was contested by the defendant no. 1 by filing written statement denying all material allegations made in the plaint. It is the specific case of the defendant the 'Ka' schedule property was owned by the husband of defendant no. 1. Proforma-defendant no. 2 purchased the said property and subsequently while in need of money the proforma-defendant no. 2 decided to dispose of the property at a consideration of Rs. 2,32,815/- and the defendant no 1 purchased the same. The deed was executed on 15th July, 2011 and registration was done on 18th July, 2011. The defendant no. 1 thus having acquired title in respect of property in suit started possessing the same by mutating her name. The plaintiffs when disclosed that they acquired the property by purchase, the defendant got the office of the Registering authority searched and found that the plaintiffs got the two sale deeds prepared and executed in their name on antedated stamp papers in collusion with the proforma-defendant no. 2 with whom the plaintiff no. 1 had friendship. The antedated stamp papers were purchased from the vendors dealing in Non-Judicial stamp papers beyond the territorial jurisdiction of the local Registering Authority. This fact indicates that collusively the deeds were prepared to harass the plaintiff.
6. Learned Trial Court after considering the pleadings of the parties as well as their evidence on record was pleased to pass the decree declaring the right title interest and possession over 'Ka' schedule property which is the suit property in favour of the plaintiffs and it was further declared that defendant no. 1 has no right title interest over the suit property and

the defendant no. 1, has been permanently restrained from disturbing the possession of the plaintiffs in respect of suit properties.

7. Aggrieved by such judgement and decree the defendant no. 1 preferred an appeal being Title Appeal No. 4 of 2016 and made an unsuccessful attempt to get the impugned judgement and decree reversed. Hence the second appeal.
8. Mr. Gopal Chandra Ghosh, learned Counsel for the appellant strenuously argued that the sale deed executed in favour of the plaintiffs by the proforma-defendant no. 2 are collusive, inasmuch as the consideration money was below the prevailing market price of land. The plaintiff no. 1 has friendship with the proforma-defendant no. 2, the vendor who prepared the sale deeds on antedated stamp papers to jeopardize the interest of the defendant, who got the sale deed executed by proforma- defendant no. 2 on 15th July, 2011 and the instruments were registered on 18th July, 2011. While transferring the property, the vendor did not disclose anything about the execution of the deeds in favour of the plaintiffs. Assailing the impugned judgement Mr. Ghosh submits that both the Courts below failed to take note of the fact that the defendant has been possessing the suit property in question since purchase. The suit for declaration is not maintainable without the prayer for recovery of possession.
9. Per contra, Mr. Anjan Bhattacharya, learned Counsel for the respondents submits that the proforma-defendant no. 2 executed the sale deed in favour of the plaintiffs prior to the execution of the sale deed in her favour, as claimed by the defendant no. 1. Therefore, in view of Section 47 of the Registration Act, the sale deeds executed in favour of

the plaintiffs, though registered at a subsequent point of time, should be given precedence. It is further contended that the record of Right Exhibit-C does not prove conclusively that the possession of the property is with the defendant. Rather the title deeds of the plaintiffs would show that the plaintiffs have been possessing the suit property. Attempt was made by the plaintiffs to get their names mutated in the revenue records but taking advantage of earlier registration of the deed the defendant got her name mutated in the revenue record of right. It was an impediment to the plaintiffs and despite acquiring title as well as possession over the suit property they could not get their names mutated. It is contended further that law does not prohibit purchase of Non-Judicial stamp papers from the notified stamp vendor beyond the territorial jurisdiction of the Registering Authority, where the parties do reside. Therefore, the allegation that the stamp papers were purchased from a place, far away from the place of abode of the parties to the proceeding, would not conclusively prove the fact that there was collusion between the vendors and the purchasers. The friendship between plaintiff no. 1 and the proforma-defendant no. 2 who was the vendor and the plaintiff no. 1 does not necessarily mean that there was collusion between the parties. The plaintiffs purchased the property at a consideration, which was prevailing at the time of sale in the locality. The mere fact that the deeds were registered on 2nd November and 4th November, though executed on 8th July and 13th July, 2011, is not a manifestation of collusion to defeat the interest of the defendant.

10. True it is in view of Section 47 of the Registration Act the sale deeds executed on 8th July and 13th July, 2011 shall be given precedence and

after executing the sale deeds on 13th July, 2011 the vendor proforma-defendant no. 2 did not have any authority to transfer the 'Ka' schedule property to the defendant no. 1 on 15th July, 2011. Therefore, the defendant cannot be said to have acquired right title interest in respect of suit property. Mr. Bhattacharya submits that the appeal does not merit any consideration and concurrent findings of the learned Trial Court and learned lower Appellate Court do not warrant any interference.

11. From the attending facts of the case it is admitted that on 15th July, 2011 the proforma-defendant no. 2, the vendor executed the deed in favour of the defendant. It is the specific case of the plaintiffs that the said proforma-defendant no. 2 transferred the identical property to the plaintiffs by executing two sale deeds on 8th July, 2011 and 13th July, 2011. Under such circumstances, as seller of the property, in view of Section 55(1) (a) of the Transfer of Property Act, the proforma-defendant no. 2 had the obligation to disclose in the recital of the deed executed in favour of the defendant, the fact that he had executed two sale deeds in favour of the plaintiffs in respect of the property, he was transferring and for whatever good reason the deeds were not registered. This fact of execution of two deeds, was within the knowledge of the proforma-defendant no. 2 as vendor. As the instruments executed in the name of the plaintiffs were not registered, it was not possible for the defendant to know anything about the said execution. The content of the recital of the deed dated 15th July, 2011 unerringly indicates collusion between the plaintiffs and proforma-defendant no. 2 but both the Courts below failed to appreciate the provision of law as laid down under Section 55 (1) (a) of

the Transfer of Property Act, 1882, its infraction and consequential effect thereof.

12. True it is a record of right is not a conclusive prove of possession. But this document is sufficient to presume that the possession of the property is with the person, in whose name the record of right stands. Undoubtedly this presumption is rebuttable and the onus to rebut such presumption was with the plaintiffs. The plaintiffs failed to rebut such presumption by adducing adequate evidence regarding possession. Learned Trial Court did not frame any issue touching the possession of the suit property, though the pleadings indicate that the parties are at issue so far the possession of the suit property is concerned. However, both learned Trial Court and learned First Appellate Court failed to appreciate the presumptive value of Exhibit-C, the L.R.R.O.R.
13. When there is reason to presume that possession of the property is with the defendant, without the prayer for recovery of possession learned Trial Court had no reason to pass the decree declaring the right title interest as well as possession of the suit property in favour of plaintiffs. Section 34 of the Specific Relief Act does not permit such declaration in absence of any prayer for recovery of possession. Vendor, being the proforma-defendant no. 2 was the best person, who could have unveiled the truth. Admittedly he had friendship with plaintiff no. 1. He ought to have been brought to the witness box to adduce evidence.
14. Under such circumstances, I am of view that the judgement and decree should not be allowed to remain in force and should be set aside, which I accordingly do. Consequently, the judgement and decree

impugned are set aside. The pending application if any, also stands disposed of.

15. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court immediately.
16. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.