

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.M.A. 2 of 2018

MANAS KUMAR PANDA & ORS.

VS.

SAKTI PADA SAHOO

For the Appellants	: Mr. Ayan Poddar, Adv. Mr. Soham Dutta, Adv.
For the Respondent	: Mr. Amit Baran Dash, Adv. Ms. Ankana Sarkar, Adv.
Hearing concluded on	: 28 th June, 2023
Judgement on	: 12 th July, 2023

Siddhartha Roy Chowdhury, J.:

1. This Second Miscellaneous Appeal challenges the judgement and order dated 9th March, 2017 passed by learned Additional District Judge, 1st Court, Contai in Misc. Appeal No. 20 of 2016, affirming thereby the final order passed by learned Civil Judge, Senior Division, 2nd Court, Contai in J. Misc. Case No. 4 of 2010, dismissing the prayer of the petitioner/appellant made therein.
2. Briefly stated, the respondent, Sakti Pada Sahoo filed a suit being Title Suit No. 44 of 1999 for declaration of title in respect of the suit property coupled with declaration that solenama decree passed in Title Suit No. 223 of 1997 by learned 1st Court of Civil Judge, Senior Division, Paschim Medinipur on 1st December, 1997 vitiated by fraud and

misrepresentation, recovery of possession, permanent injunction, mesne profit etc. against 13 persons including Pranotosh Mahapatra (under whom the appellants are claiming title). It is contended that Sakti Pada Sahoo was inducted as tenant in respect of part of the property comprising within plot no. 216 having an area of 48 decimal of land, jointly owned by defendant no. 1 and defendant no. 13. Subsequently, the defendant no. 1 sold and transferred $4\frac{1}{3}$ decimal of land out of the said plot no. 216 to the plaintiff and thus said Sakti Pada Sahoo became co-owner of the plot no. 216. But without impleading him, a suit for partition being Title Suit No. 223 of 1997 was disposed of on the basis of solenama entered into by and between the parties of the suit.

3. The suit filed by Sakti Pada Sahoo, the respondent herein, however, was not contested by any of the defendants and learned Trial Court on 10th February, 2003 vide order no. 28 was pleased to pass ex parte decree, declaring right title interest of the plaintiff in respect of suit property and it was further declared that plaintiff is not bound by the judgement pronounced in Title Suit No. 223 of 1997 and was also entitled to recovery of possession.
4. The plaintiff thereafter, put the decree passed in Title Suit No. 44 of 1999 into execution. Consequent thereupon the appellants herein filed a petition under Order 21 Rule 97, 98, 99 and 100 of the Code of Civil Procedure registered as J.Misc. Case No. 4 of 2010 contending, *inter alia*, that the suit property was owned by Pranotosh Mahapatra who acquired exclusive ownership over 40 decimal of land in plot no. 216 by virtue of solenama decree passed in T.S. No. 223 of 1997. While possessing the suit property, on 11th April, 1978, Pranotosh exchanged

the same with Bibhishan Maity and Bibhishan Maity thus acquired the title in respect of said 40 decimal of land comprised in plot no. 216 and after his demise his legal heirs and successors stepped into the shoes of said Bibhishan Maity. They transferred 'A' Schedule Property to Manas Kumar Panda, appellant no. 1 who has been possessing the suit property since after transfer on 12th August, 2001. The legal heirs of Bibhishan Maity also sold and transferred 'B' Schedule Property to one Jaharlal Jana by a registered deed of sale on 25th February, 2002. Niranjana Ghorai and Raj Kumar Ghorai, the appellants no. 2 and 3 acquired the title in respect of 'B' Schedule Property by purchase from Jawaharlal Jana vide deed no. 4696 dated 29th June, 2006. Since after purchase they have been possessing the suit property.

5. On 12th May, 2010, the decree holder/respondent illegally threatened to evict the appellants from the property he purchased. Subsequently, the appellant came to know about Title Suit No. 44 of 1999 which was filed without impleading the persons who have acquired title from Pranotosh Mahapatra.
6. Therefore, it was contended that the decree passed in Title Suit No. 44 of 1999 is not binding upon the petitioners/appellants. That apart the ex parte decree was obtained against defendant no. 13 who was dead. Decree against dead person is nullity.
7. By filing the application under Order XXI Rule 97, 98, 99 and 100 of the Civil Procedure Code the petitioners/appellants prayed for declaration of title in respect of property which was subject matter in Title Suit No. 44 of 1999. The ex parte decree passed in said proceeding is void, collusive, illegal and not binding to the petitioner.

8. An order of injunction was passed to protect their peaceful possession over the property.
9. This application was contested by the opposite party/respondent. Learned Trial Court after considering the evidence both oral and documentary, was pleased to dismiss the proceeding being J. Misc. Case No. 4 of 2010, however, without cost.
10. The said order of learned Trial Court was challenged before the learned Additional District Judge, 1st Court, Contai, Paschim Medinipur, in Misc. Appeal No. 20 of 2016. Learned 1st Appellate Court was pleased to dismiss the appeal and affirmed the order passed by learned Trial Court. Hence this Appeal.
12. Mr. Ayan Poddar, learned Counsel for the appellants submits that from the attending facts of the case it is admitted that Pranotosh Mahapatra had right title interest over the suit plot no. 216 as one of the co-sharers. He became exclusive owner in respect of 40 decimal of land comprised within plot no. 216 by virtue of oral partition followed by solenama decree. Said Pranotosh Mahapatra exchanged the said property by executing the deed of Exchange vide no. 2140 dated 11th April, 1978 admitted as Exhibit-1, with Bibhishan Maity. After the demise of said Bibhishan Maity his legal heirs on 12th August, 2001 transferred a portion of said plot of land to the appellant no. 1 by deed no. 6096 Exhibit-2 and sold certain portion of land from suit plot no. 216 to Jawaharlal Jana vide deed no. 1806 of 25th February, 2002. Jawaharlal Jana while possessing the suit property transferred the same in favour of appellant no. 2 and 3 vide deed no. 4696 Exhibit-4. It is further contended that Pranotosh Mahapatra acquired right title

interest in respect of property in suit by virtue of a solenama decree passed in Title Suit No. 223 of 1997. Learned Courts below however failed to appreciate the said fact.

13. The solenama decree according to Mr. Poddar, was passed in T.S. No 223 of 1997 which was instituted for partition by metes and bounds in respect of total land area of 108 acre and 68 decimals between 42 plaintiffs and 13 defendants. The reason for entering into solenama decree was for amicable settlement and peaceful coexistence and to clearly identify the original owners in respect of the land situated in various plots which were unorganized due to various partitions effected orally from time to time. However, to maintain peace and harmony among all the present titleholders and the persons in possession of the entire land, it was clearly stated that the said solenama decree records only the shares of the original owners without disturbing the nature and characters of land which were already conveyed by the respective owners of the land.
14. It is contended further that the predecessor-in-interest of the appellants i.e. Pranotosh Mahapatra was arraigned as plaintiff no. 31 while the predecessor-in-interest of the Opposite party i.e. Jyotish Mahapatra was arraigned as Petitioner no 42 in the said T.S. No 223 of 1997.
15. A bare perusal of the solenama decree would show that Pranotosh Mahapatra was allocated 40 decimals of land out of 48 decimals in plot no. 216. It also shows that the predecessor-in-interest of the respondent Jyotish Mahapatra was not allotted plot no. 2016 and therefore, he had

no interest whatsoever in the said plot no 216. Rather he acquired property described in Ga/2 schedule in the Solenama decree.

16. It is submitted by learned Counsel for the appellants that the Solenama decree has not been declared void as a whole, only by the Ld. Court the opposite party is not bound by this Solenama Decree, as he was not made a party to the suit culminated into Solenama Decree.
17. It is adverted that Bibhishan Maity and his legal heirs had been possessing the property by mutating their names and by paying rates and taxes.
18. It is also submitted that the Opposite party could not have instituted the said suit of T.S. No 44 of 1999 challenging the compromise decree in T.S. No. 223 of 1997 without impleading all the parties which makes the decree, put into execution void and thereby the Solenama decree remains unaffected.
19. It is submitted by learned Counsel for the appellants that Jyotish Mahapatra since was not allotted share in plot no. 216 by virtue of the Solenama decree, he had no authority to transfer any part of plot no. 216 by way of exchange, in the year 1992. Pranotosh Mahapatra since had acquired title in respect of 32 decimals of land in plot no. 216 therefore Bibhishan Maity by way of exchange acquired title. Hence subsequent transfer by the heirs of Bibhishan Maity is legal and void.
20. Refuting such contention, Mr. Das, learned Counsel for the respondent submits that respondent Sakti Pada Sahoo acquired the property by purchase from Jyotish Mahapatra, one of the co-shares in respect of plot no. 216 on 30th April, 1992. Exhibit 1 is the said document. According to Mr. Das, the suit property was originally owned

by Swarup Narayan Mahapatra who was survived by his three sons and each of the three sons Priyanath, Trailakya and Gopinath acquired 16 decimal of land each in plot no. 216. Santosh and Pranotosh are the grandsons of Trailakya and sons of Gyanada Mahapatra who jointly acquired 16 decimal of land. While three sons of Gopinath acquired 16 decimal of land and each of them had $5\frac{1}{3}$ decimal of land. Drawing my attention to Exhibit-I Mr. Das submits that Santosh and Pranotosh Mahapatra sold and transferred their $1\frac{1}{3}$ rd share equivalent to 16 decimal of land in plot no. 216 to Hemanta Jana in the year 1971. Therefore, Pranotosh Mahapatra cannot be said to have title in respect of plot no. 216 subsequent to such transfer. Therefore, Pranotosh could not confer title upon Bibhishan Maity by executing deed of exchange in respect of 32 decimal of land by exchange. When Bibhishan Maity could not acquire right title interest over the plot no. 216, his legal heirs had no authority to transfer the said property. The appellants being the successors in interest of Bibhishan Maity cannot claim to have acquired any right title interest in respect of plot no 216. In the year 1992 the respondent Sakti Pada acquired $4\frac{1}{3}$ decimal of land by exchange from Jyotish Mahapatra. The Title Suit No. 223 of 1997 for partition was decided without impleading Sakti Pada Sahoo.

21. Exhibit-10, the Solenama decree passed in title suit reveals that Sitaram Mahapatra was the original owner. He was survived by Haricharan and Haricharan was survived by Swarup Narayan. Swarup was survived by his three sons Priyanath, Trailakyanath and Gopinath Mahapatra. Trailakya was survived by his son Gyanada, who again was survived by his two sons Santosh and Pranotosh Mahapatra. Recital of

Exhibit-I says that Santosh and Paritosh jointly sold and transferred 16 decimal of land out of 48 decimal comprising within plot no. 216, which their father acquired exclusively by way of amicable partition. Such transfer took place in 1971 and one Hemanta Jana acquired his title over that property by purchase from Pranotosh and Santosh Mahapatra.

22. It goes without saying that a person cannot transfer more than what he is entitled to transfer. Section 8 of the Transfer of Property Act says :-

“Section 8 in The Transfer of Property Act, 1882

8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where the property is machinery attached to the earth, the moveable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith; and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.”

23. In the recital of the deed Exhibit-I Pranotosh and his brother Santosh Mahapatra stated that they had right title interest to the extent of 16 decimal of land in plot no. 216 which their father acquired by way of amicable partition with his other co-sharers. Having transferred 16

decimal of land in 1971, Pranotosh cannot be said to have any interest over plot no. 216 to transfer in favour of Bibhishan Maity by way of exchange, affecting the transfer that had taken place in 1992 between Sakti Pada Sahoo and Jyotish Mahapatra, long before solenama decree was passed. Therefore, neither Bibhishan nor his legal heirs can be said to have acquired any interest over the property comprised within plot no. 216 as a natural corollary, the appellants cannot be said to have acquired any right title interest over the said plot of land.

24. Therefore, in my humble opinion, both the Courts below had reason to refuse the prayer of the appellants. My attention is drawn to order dated 14th May, 2010 passed in Title Execution No. 21 of 2009. The said order reveals that the ex parte decree passed in favour of the respondent was executed and possession of the respondent was restored following due process of law. Therefore, in my humble opinion, the impugned judgement does not warrant any interference. The appeal is bereft of merit and is dismissed however without cost.
25. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.
26. 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.)