

31.01.2023
SL No.126
Court No.8
(gc)

SA 209 of 2003

**Sri Dinanath Mondal, since deceased
Represented by Amit Kumar Baidya & Anr.
Vs.
Sri Palan Mondal**

None appears on behalf of the appellants. Even on the earlier occasion, the appellants were not represented.

The appellate judgment and decree dated 29th June, 1999 and 13th July, 1999 respectively affirming the judgment and decree dated 30th May, 1998 and 11th June, 1998 respectively in a suit for declaration and injunction is a subject matter of challenge in this second appeal. The appellants claimed that his father has purchased the suit land from one Pannalal Naskar. According to him, it was although purchased in the name of the defendant, but the defendant was just a name lender. The suit land was purchased actually for the plaintiff. The plaintiff has been in possession since the date of purchase has raised boundary wall and planted trees. The plaintiff had been paying rent to the State Government. When his father became ill, his father called the defendant to meet. The defendant was asked to execute a 'Nadabipatra (no claim)' in his favour. At that time, the defendant alleged to have demanded the original sale deed from the plaintiff's father for the purpose of preparation and execution of such no

claim deed by the defendant. Pursuant to such request, the plaintiff's father had handed over the said deed to the defendant. After a considerable period, the defendant had executed 'Nadabipatra' in his favour. However, the defendant executed the sale deed in favour of one Swapna Basu after execution of 'Nadabipatra' that Swapna Basu could not take possession and for that Swapna Basu has filed a money suit against the present defendant. In the said suit, Swapna Basu got a decree in the lower court and at the appellate stage, the matter was ended in a compromise. As for the terms of compromise, Swapna Basu was to reconvey the property in favour of the defendant. The plaintiff alleged that he has been in possession of the property all along and the property was just purchased by his father for his benefit. So, accordingly, he prayed for a decree for declaration and injunction. The defendant contested the proceeding. In the written statement, the defendant has categorically denied the claim of the plaintiff. The contention before the Trial Court as well as the First Appellate Court was that the property was purchased in the name of the plaintiff as the father of the plaintiff was a Central Government employee and he required permission from the Central Government before acquiring any property in his name and he required prior permission.

The Trial Court disbelieved the said claim but the First Appellate Court did not agree with the Trial Court on

this issue. However, on the 'Nadabipatra', both the Courts have come to a finding that the said document is not proved in accordance with law.

Both the Courts have taken into consideration that one Swapna Basu filed a money suit against the present defendant wherein she has averred that one Dinanath Mondal is in possession and as she could not get possession from Dinanath so, she had to file the money suit.

In the said suit, the Trial Court observed that "the defendant could not seriously dispute the claim of the plaintiff for the refund of consideration money". The sum and substance of that suit goes to show that Swapna Basu did not get possession from the present defendant who was also a defendant in that suit, and had to refund the money after getting a reconveyance deed from Swapna Basu. It is crystal clear that the present defendant, i.e. to say the defendant of that suit could not deliver possession to Swapna Basu. Had he been in possession, obviously he could have delivered it to Swapna Basu.

The plaintiff could not prove that the defendant has executed 'Nadabipatra' in favour of the plaintiff.

The concurrent findings of facts to the effect that the plaintiffs have failed to prove its title and established 'Nadabipatra' which is the sheet anchor of his claim in the suit, we do not find any reason to admit the second appeal.

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.)