

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Supratim Bhattacharya

S.A. 48 of 2008

With

IA No. CAN 1 of 2007

(Old No. CAN 4535 of 2007)

Sri Susanta Kumar Mandi

-Vs.

Sri Shambhu Nath Das

For the Appellant : Mr. Asish Chandra Bagchi,
Ms. Malyasree Maity.

For the Respondent : Mr. Kartick Bhattacharyya,
Ms. Soumashree Dutta

Heard On : 24.03.2023

Judgement Delivered On : 23.06.2023

Supratim Bhattacharya, J.:

1. The instant appeal has been preferred by the appellant being aggrieved by and dissatisfied with the judgement and decree passed

in Title Appeal being Title Appeal No. 212 of 2003 dated 21.02.2007 by the Ld. Additional District Judge 3rd Court Howrah.

2. In the said judgement the First Appellate Court has allowed the appeal on contest setting aside the Judgement and Decree passed by the Ld. Trial Court which has been passed in the Title Suit being Title Suit No. 122 of 1997 dated 07.08. 2003 passed by the Ld. Civil Judge Jr. Divn. 6th Court Howrah.
3. The fact of the lis is that one Susanta Kr. Mandi had filed the Title Suit No. 122 of 1997 against Chanchala Malik and Shambhunath Das being the defendants No. 1 and 2 respectively praying for a decree for declaration that the sale deed dated 14.05.1991 between the defendants No. 1 and 2 is fraudulent and illegal as well as ultra vires and not binding upon the plaintiff and in addition had also prayed for a decree of declaration that the defendants No. 1 and 2 are the licensee and be evicted in due course of law.
4. The Ld. Trial Judge after thorough analysis and considering the evidence both oral and documentary has allowed the suit on contest against the defendant No. 2 that is Shambhunath Das and ex parte against the defendant No.1 namely Chanchala Malik.
5. Against the aforementioned judgement and decree passed by the Ld. Trial Court, the defendant No. 2 namely Shambhunath Das preferred the Title Appeal being Title Appeal No. 212 of 2003 and the said

appeal has been allowed on contest by setting aside the judgement and decree passed by the Ld. Trial Court.

- 6.** The Ld. Counsel appearing on behalf of the appellant has submitted that the Appellate Court erred in reversing the judgement of the Ld. Trial Court by applying Section 60 Clause (b) of the Indian Easement Act, 1882 as because the Easement Act does not apply in West Bengal. Ld. Counsel has further submitted that the defendant No. 2 namely Shambhunath Das who himself has deposed before the Trial Court as DW1 has stated that he was present at the time of the first sale deed dated 6.2.1981 whereby Bechu Malik and Kalipada Malik sold the 'B' schedule property to Chanchala Malik, defendant No. 1. He further deposed that the defendant No. 1 namely Chanchala Malik again sold that property to the plaintiff on 11.4.1986 therefore no question arises as regards the execution of a second deed in favour of the defendant No. 2. The Ld. Counsel has further submitted that for the sake of argument if it is taken into consideration that Chanchala Malik had first sold the 'B' schedule property to the plaintiff and thereafter once again has sold the self same property to Shambhunath Das through a sale deed dated 14.5.1991 then in view of Section 48 of Transfer of Property Act the prior transfer by deed of sale will prevail. The Ld. Counsel banking upon the aforesaid submission has emphasized the fact that the judgement of the First

Appellate Court which has reversed the judgement of the Trial Court is not at all tenable in law and not acceptable in the purview of law.

- 7.** The Ld. Counsel appearing on behalf of the respondent namely Shambhunath Das has submitted that the appellant has no ground to succeed. He has further stated that the contentions of the appellant/plaintiff are not at all tenable in law. He has further stated that the suit has been filed beyond the statutory period of filing and as such and as such is barred by the law of limitation. Ld. Counsel has further submitted that the respondent in the year 1979 got licence from the original owner that is Kalipada and Bechuram and with the permission of the owners of the land had made construction over the 'B' schedule property and is residing there with his family. He has further submitted that the said licence is not revocable. He has further submitted that the appellant/plaintiff did not make any construction over the 'B' schedule property and had not given licence to the respondent. The Ld. Counsel has also relied upon Section 60(b) of the Indian Easements Act. Banking upon the aforesaid facts and circumstances he has prayed for dismissal of the instant appeal. The Ld. Counsel has relied upon the following judgements which are as follows: 2008 (3) CHN 639, AIR 1987 SC 1942 and 2004 (2) CHN 67.
- 8.** Two substantial questions of law have been framed which are as follows:

- i) Whether the Learned First Appellate Court committed substantial error in law in reversing the judgment and decree of the Learned Trial Court upon relying on the provision of Section 60 of the Easement Act?
 - ii) Whether the Learned First Appellate Court committed substantial error in law in holding that the irrevocable licence was granted in favour of the defendant No. 2 in respect of the suit property?”
- 9.** The moot point in the instant lis is as to whether there is a valid deed of sale, between Shambhunath Das being the purchaser and Chanchala Malik being the seller, dated 14.05.1991.
- 10.** This Court takes into consideration Section 60 of The Indian Easements Act 1882, which has been relied upon by the respondent. Section 60 of The Indian Easements Act, 1882 states as follows:

“ License when revocable.—A license may be revoked by the grantor, unless—

(a) it is coupled with a transfer of property and such transfer is in force;

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.”

First of all The Indian Easements Act is not applicable in the State of West Bengal but the principles are applicable.

11. In the instant case from the documents exhibited that is Exhibit-5 it is evident that the owners of the property namely Kalipada Malik and Bechu Malik sold the said plot of land being 14 Chittakhs 22 sq. ft. in Dag No. 241(218), Khatian No. 618(62), J.L No. 6, within Mouja and Police Station Jagacha, District Howrah that is the 'B' schedule property on 04.02.1980 through the Deed No. 587 of 1981. Thus the question of irrevocable licence in favour of the respondent by Kalipada and Bechuram gets revoked not only impliedly but expressly, which is in accordance with Section 61 of The Indian Easements Act, 1882, which states as follows:

“Revocation express or implied.—The revocation of a license may be express or implied.”

In the same way the execution of the sale deed by Chanchala Malik since deceased in favour of Susanta Kr. Mandi, expressly revokes the licence which was if at all granted by the said Chanchala Malik as has been claimed by the respondent.

12. On consideration of the documentary evidence on record it reveals that the **Exhibit-5** is a Sale Deed being No. 587 of 1981 dated 04.02.1980 wherein Kalipada Malik and Bechu Malik are the vendors while Chanchala Malik, since deceased, who was a party being the Respondent/Defendant and has been expunged on her death, was the purchaser.

Exhibit-6 is a Sale Deed being No. 2559 of 1991 wherein the purchaser is Shambhunath Das(Respondent/Defendant) while the seller of the property is Chanchala Malik(Respondent/Defendant). From the said deed it also reveals that the LTI of Chanchala Malik has been identified by Susanta Mandi and the said Susanta Mandi is one of the witnesses in the said deed.

Exhibit-7 is a Sale Deed being No. 2544 of 1988 wherein the purchaser is Susanta Kumar Mandi (Appellant/Plaintiff) and the seller is Chanchala Malik, since deceased, who was one of the Respondents/Defendants, who has been expunged on her death.

All the exhibits being Exhibits No. 5, 6 and 7 are Sale deeds in respect of the self same property that is the B Schedule property which is measuring about 14 chittaks 22 sq. ft. of land under Dag No. 241(218), khatian No.618(62), J.L.6, within Mouja and P.S. Jagacha, District Howrah.

So it is evident from the exhibited documents that Susanta Kumar Mandi the appellant/plaintiff had purchased the schedule 'B' property in the year 1988, much prior to the year 1991 during which year Shambhunath Das one of the defendants purchased the property from Chanchala Malik.

As such Chanchala Malik after selling the property to Susanta Mandi in the year 1988 had no right, title or interest in

respect of the 'B' schedule property, so the Sale Deed being Deed No. 2559 of 1991 that is Exhibit-6 is not at all valid instead it is void.

13. Through the title suit being Title Suit No 122 of 1997, which has given rise to the instant appeal, the plaintiff has sought for a decree for declaration that the sale deed dated 14.5.1991 is fraudulent and illegal and not binding upon the appellant/plaintiff. In this regard this Court refers that a party may ask for cancellation of a forged document which has been stated in the case between *Jugul Kishore Bhattachaji vs Mohima Chunder Dhur* passed on 15.08.1881 by an Hon'ble Division Bench of the Hon'ble High Court at Calcutta comprising of Hon'ble Judges/Coram Henry Thoby Princep and Charles Dickson Field.
14. This Court also refers to the Judgement published in AIR 1978 All 421 in the suit between *Beni Prasad and others Versus Smt. UJJI alias Ujaria and others* wherein it has been stated that A sold certain property to which she had only a right of maintenance, to deprive the plaintiffs of the property the plaintiffs can ask for cancellation of the document.
15. In this context it is worth mentioning that it is true that a void instrument need not be cancelled. Nevertheless party may sue even though the deed is void or voidable. Such suit is maintainable even though the plaintiff has parted with his interest in the property. This

has been stated in the suit between Radha Sundar Roy and another
Versus Saktipada Roy reported in AIR 1936 CAL 714.

The aforementioned authority also lays down the following:

“Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such Instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable.”

- 16.** Thus, from the aforementioned discussion it is evident that one of the defendants namely Chanchala Malik had no right, title and interest over the ‘B’ schedule property after selling the same in the year 1988 to the appellant/plaintiff namely Susanta Kumar Mandi, as such the deed of sale by Chanchala Malik since deceased, one of the original defendants in favour of Shambhunath Das the other respondent/defendant is void.
- 17.** With the sell of the ‘B’ schedule property by Kalipada Malik and Bechu Malik in favour of Chanchala Malik the question of irrevocable license gets revoked.

In the same way with the sell of the ‘B’ Schedule property by Chanchala Malik in favour of Susanta Kumar Mandi the fact of irrevocable licence gets revoked. In this case there is express revocation of licence in every step.

- 18.** As regards to the point of limitation raised by the respondent, this Court refers to the fact that the respondent namely Shambhu Nath Das had the knowledge of the execution of the sale deed (that is Exhibit-7) by Chanchala Malik in favour of Susanta Mandi. In spite of having the knowledge of execution of the aforesaid deed in the year 1988, the respondent/ defendant has purchased the self same property once again from Chanchala Malik which hints to the fact that there was subsistence of collusion between Chanchala Malik and Shambhunath Das.
- 19.** From the aforementioned discussion it is evident that the respondent namely Shambhunath Das has not come before the Court with clean hand.

In this aspect this Court refers to the doctrine "*one who seeks equity must come in clean hand*". In this instant case the respondent has sought for equity on the ground of limitation which cannot be made available to the respondent as he has not approached the Court in clean hand instead he has suppressed facts. The said respondent has sought for relief on the ground of licence on the other hand it reveals that there is a deed of sale in his favour by Chanchala Malik though the said deed is void.

So the equity sought for by the respondent on the ground of limitation cannot be given to the respondent. In this context this

Court refers to the Judgment passed by the Hon'ble Apex Court in the Case between *Ramjas Foundation and Another Vs. Union of India and Others* reported in (2010) 14 SCC 38 wherein the Hon'ble Apex Court has laid down in Paragraph 21 which is as follows:

“21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.”

- 20.** So with the application of Section 60 and Section 61 of the Indian Easement Act the First Appellate Court has completely misdirected itself and has committed substantial error in law.
- 21.** As such the prayer of the Appellant/Respondent praying for a decree for declaration that the sale deed dated 14.5.1991 is

fraudulent and illegal and not binding upon the plaintiff is tenable and is allowed and there is no subsistence of licence in favour of the respondent.

Hence, it is ordered that the instant appeal being **S.A. 48 of 2008** is **allowed on contest** and the Judgment passed in the **Title Suit No. 122 of 1997 is affirmed** by setting aside the Judgment passed in the Title Appeal No. 212 of 2003.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)