

31 06.12.23

Ct. No. 04

akd

S.A.T. 6 of 2020
CAN 1 of 2020 (Old No. CAN 796 of 2020)

Sri Santa Barman & Anr.

Vs.

Kitin Barman & Ors.

Mr. Suprobhat Bhattacharya,

Mr. Md. Habibur Rahman.

... for the appellants.

Mr. Md. Nauroz Rahber,

Mr. Muhammad Jawwad.

... for the respondents.

By consent of the parties the instant appeal is taken up today for final disposal at the admission stage.

Considering the nature of the impugned judgement and decree passed by both the Courts below, we invited the respondents to address the Court on the veracity and legality of the judgements assailed in the instant appeal.

The suit for declaration of title and permanent injunction was instituted by the plaintiffs/appellants through the constituted attorney before the Trial Court. However, the respondents took a defence that they are in possession of the suit premises and even perform the rituals and also the festivals in the middle of the suit land; and, in fact, large number of local peoples have been enjoying and performing such rituals over the suit land. The parties were put on trial and several documents were produced to be received in evidence and were marked exhibits.

Both the Courts below proceeded to dismiss the said suit solely on the ground that there is a serious

dispute on the existence of the plaintiffs and, in fact, the Trial Court passed an order directing the plaintiffs/appellants to appear before the Court. Since the said order was not complied with yet the suit was allowed to be proceeded with through the constituted attorney, both the Courts below drew adverse inference and proceeded to dismiss the suit as not maintainable, as the existence of the plaintiffs/appellants is doubtful and, therefore, have no locus standi to institute the suit.

Curiously enough both the Courts below further observed that since the vendor of the plaintiffs did not adduce evidence to prove the title, it would be presumed that the plaintiffs have miserably failed to prove their title in respect of the suit property. From the judgement of the Trial Court it is evident that several documents were marked touching upon the title in respect of the suit premises and, in fact, it has not been denied that the Record of Rights stands in the name of the vendor of the plaintiffs.

The primary question involved in the aforesaid suit is whether the plaintiffs have been able to prove the title in respect of the suit premises and the ancillary issue relates to the possession of the parties thereupon.

As indicated above, both the Courts below proceeded on the premise that since the existence of the plaintiffs is doubtful, the constituted attorney has no locus standi to institute the suit on the strength of the power of attorney filed before the Court and marked as Exhibit-5.

At the formative stage of the instant appeal we directed the appellants to secure the presence of the

plaintiffs in order to eradicate any sense relating to the existence, which has been duly complied, as one of the plaintiffs appeared in person and the learned Counsel representing the plaintiffs/appellants discloses the identity of the plaintiff after being satisfied himself in this regard and fairly submits before the Court that he is one of the executants of the power of attorney and the plaintiffs in the said suit. It is further submitted before us that the plaintiff no. 1 is octogenarian and suffering from various ailments and, therefore, is unable to appear before this Court.

Considering the fact that the suit was dismissed solely on the technicalities and not on merit and such technicalities have evaporated in view of the appearance of one of the plaintiffs before us, we thus find that the judgement and decree of both the Courts below needs interference.

However, the learned Counsel for the respondents is very much vocal in his submission that the plaintiffs were never in possession of the property and, therefore, cannot lay claim in respect thereof.

Though we could have ventured to return findings on the aforesaid submissions, but we refrain from doing so, as both the Courts below have not decided the matter on merit. We hasten to add that the concept of title and concept of possession are two distinct and separate thing, though remotely connected with each other depending upon the nature of the pleadings and evidence adduced in this regard.

In view of the findings made hereinabove the judgement and decree passed by the Appellate Court as well as the Trial Court are hereby set aside.

The suit is restored to its original file and number.

The Trial Court is directed to dispose of the suit within three months from the date of the communication of this order after affording an opportunity of hearing to the respective parties or their Counsels on merit by recording proper reasons in accordance with law.

With the above observations the appeal and connected application are disposed of.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)