

IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

S.A. 324 of 2016

SANTOSH KUMAR ACHARYA
VS.
KRISHNA PADA ACHARYA & ANR.

For the Appellant	: Mr. Gopal Ghosh, Adv.
For the Respondents	: Mr. Birendra Kr. Jha Mr. Anish Das, Adv. Mr. Manish Patra, Adv.
Hearing concluded on	: 8 th August, 2023
Judgement on	: 16 th August, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this appeal is to the judgement and decree passed by learned Additional District Judge, Fast Track, 3rd Court, Barasat in Title Appeal No. 7 of 2013, thereby reversing the judgement and decree passed by learned Civil Judge, Junior Division, 1st Court, Barasat in Title Suit No. 85 of 2010.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.
3. Briefly stated, depicting himself as a refugee displaced from East Pakistan, the plaintiff was allotted the suit property by Government of West Bengal in the year 1989 vide patta deed no. 529 registered at A.D.R., North 24 Parganas. The plaintiff thereafter, having a kancha

construction over the suit property started residing there by mutating his name. Defendant no. 1 is the full blood brother of the plaintiff, while defendant no. 2 is the wife of defendant no. 1. On 12th April, 2007 the defendants requested the plaintiff to grant leave and license to stay in the house. The plaintiff granted the license as prayed for. On 15th December, 2009 when the plaintiff asked the defendants to quit and vacate the suit premises they refused the plaintiff. Hence the suit.

4. The defendant contested the suit by filing written statement denying all material allegations. It is the specific case of the defendant that parents of the plaintiff hailed from erstwhile East Pakistan as refugee and Government of West Bengal allotted the suit property in the name of the mother of the plaintiff and defendant no. 1. Initially the property was within the jurisdiction of Basu Nagar Anchal Panchayet, Gram Sava. Kiran Bala (Roy) Acharya, the mother of the parties got her name mutated in the said panchayet and started possessing the property paying the rates and taxes. Amulya Chandra Acharya, the father of the plaintiff and the defendant no. 1 constructed the house. Amulya Chandra Acharya died a premature death and the defendant no. 1 was brought up by the plaintiff and their mother. The defendant no. 1 used to respect the plaintiff like his father and had reposed trust and faith in him. It is his further case that he was living in the joint family together with plaintiff and their mother. He studied up to class VII. The plaintiff played the role of the head of the family at the time of the negotiation of marriage of defendant no. 1, after marriage the defendant started living in the suit property, their son Raj Kumar Acharya was born in the said house. Kiran Bala (Roy) Acharya, the mother of the plaintiff and

defendant no. 1 died on 11th December, 2005 in the suit house. The defendant no. 1 had no knowledge about the alleged deed of gift executed in favour of the plaintiff. He claims to have half share over the suit property. The brothers entered into a settlement on 5th October, 2009 during the lifetime of their mother acknowledging their respective half share over the suit property. The defendant prayed for dismissal of the suit.

5. Learned Trial Court after considering the pleadings of the parties and evidence adduced by the witnesses was pleased to declare the title of the plaintiff in respect of suit property and directed the defendant to quit and vacate the same within 90 days. The said judgement was challenged in Title Appeal No. 71 of 2013. Learned Appellate Court was pleased to reverse the judgement passed by learned Trial Court. Hence the appeal.
6. Mr. Gopal Chandra Ghosh, learned Counsel for the appellant assails the impugned judgement on the ground that learned First Appellate Court failed to appreciate the evidence on record. The deed Exhibit-1 is sufficient to hold that the plaintiff acquires the absolute title in respect of suit property. The defendant no. 1, according to Mr. Ghosh, was never ever a member of the family of the plaintiff. Drawing my attention to the testimony of P.W. 1, Santosh Kumar Acharya, Mr. Ghosh submits that the plaintiff came to India in the year 1966-67 from East Pakistan. After two years his parents came to India. His father died on 8th February, 1969. Therefore, there is reason to hold that the land was allotted in favour of the mother of the plaintiff or their father constructed the house. Though the defendant no. 1 specifically adverted that the land was allotted in favour of their mother in absence of any

document to substantiate such claim, it is to be held that the allottee was the plaintiff which is why the State Government executed the deed in his favour conferring title over the suit property.

7. Refuting such contention Mr. Birendra Kr. Jha, learned Counsel for the respondents submits that the defendant no. 1 was younger by 7 years to the plaintiff. When the plaintiff came to India, admittedly he was 14-15 years old and this defendant no. 1 was 8-9 years old. Their father died in India in the year 1964. Kiran Bala (Roy) Acharya, the mother of the plaintiff and defendant no. 1 being the only adult person in the family was allotted the land. Initially the land was within the jurisdiction of Basu Nagar Anchal Panchayet, Gram Sava. Exhibit-B is the document to show that Kiran Bala (Roy) Acharya was possessing the property by mutating her name and by paying rates and taxes since 1382 B.S. The deed was executed in the year 1989 and P.W. 1 admitted that he got the deed executed in his favour with the help of political party. Drawing my attention to Exhibit-E-1 Mr. Jha submits that before the marriage of defendant no. 1 with defendant no. 2, an agreement which is commonly known as 'Pati Patra' was executed and Santosh Kumar Acharya, the plaintiff signed the said agreement on behalf of the bridegroom. This document demonstrates the fact that the parties were residing in the same family. According to Mr. Jha, the State of West Bengal prepared the scheme with the object to rehabilitate the displaced persons and their family members. Even though the deed was executed in the name of the plaintiff, land should be considered to have been given to the benefit of defendant no. 1 as well.

8. Nowhere in the scheme prepared by the State of West Bengal, Refugee Relief Rehabilitation Department family is defined. In Black's Dictionary (11th Edition) 'family' means n. (14c)
 1. A group of persons connected by blood, by affinity, or by law, esp. within two or three generations.
 2. A group consisting of parents and their children.
 3. By extension, a group of people who live together and usu. have a shared commitment to a domestic relationship.
9. If we consider the manner of living of the parties to the suit taking lumen from the meaning of family as stated hereinabove, we feel no hesitation to hold that the parties to this suit were family members.
10. Upon perusal the evidence-on-record I find that the plaintiff as P.W. 1 stated that he admitted to have acquired the suit property through a political party. He was 12 years old when he came to India. As a minor he was not competent to receive the allotment, therefore, there is every reason to hold that the suit property was allotted in the name of their mother. Amulya Chandra Acharya, the father of the plaintiff and defendant no. 1 died on 8th February, 1969. Kiran Bala (Roy) Acharya was allotted the plot of land. Exhibit-B shows that she got the property mutated in her name.
11. The State of West Bengal in order to alleviate the trauma of the displaced persons framed the scheme for rehabilitation of those who were compelled to leave their home and hearth. The memo no. 3492/17Rehab/2P-82/79 dated, Calcutta, the 2^{3rd} April, 1981 says :-
"No. 3492/17-Rehab/2P-82/79 Dated, Calcutta the 23rd April, 1981
From : The Deputy Secretary to the

Government of West Bengal

To : 1. *The Refugee Rehabilitation Commissioner, West Bengal,
10, Camac Street, Calcutta-700 017*

2. *The District Magistrate/Deputy Commissioner*

Sub : *Allotment of plots and conferment of right and title.*

The undersigned is directed by order of the Governor to say that as a measure of rehabilitation of displaced families, homestead plots were/are being allotted in G.S. Colonies or squatting in approved squatters colonies were/are being regularised with the clear intention that the beneficiaries of the allotment will be all the members of the family on record through the allotment order was issued in the name of one member of the family as 'Karta' or defacto head of the family who might have been the eldest brother or else as per composition of the family as recoded at the time of allotment of the plots. Although allotments could not/cannot be made to a family in the abstract sence, it follows and it is confirmed that the allottee in a case obtained the allotment order on behalf of the other members who were shown as comprising the family as well.

2. *The undersigned is, therefore, directed to say that the conveyance deeds lease-hold or free-hold as may be approved from time to time, which have not yet been executed, shall have to be executed by all the persons who were shown as comprising the family his legal heirs, if any was dead, if the actual allotment order was not issued in favour of a common propositors or if there was not common propositor amongst the person whose names were recorded in the allotment register as comprising the family.*

3. *The cases where deeds have already been executed and registered in favour of one member excluding the other members of the family, the rehabilitation of the other members of the family shall also be deemed to be covered by the allotment, even though it was made to one member of the family as Karta or defacto head of the family. In such cases, the allotment will be in the nature of a constructive trustee for the other members of the family. He will be found in a fiduciary character to project the interests of the other members of the family, as he was well*

aware of the fact that the allotment to him was made for the rehabilitation of all the members of the family including the allottee and he held the allotment for the benefit of all the members of the family on record.

4. The undersigned is to add that all pending cases may be disposed of on the principle/clarification as given above.

*Sd/ R.C. Ganguly,
Deputy Secretary”*

12. Clause 3 of the said notification shows that the case where the deeds have already been executed and registered in favour of one member excluding the other members of the family, the rehabilitation of the other members of the family shall also be deemed to be covered by the allotment, even though it was made to one member of the family as Karta or defacto head of the family.
13. Therefore, there is every reason to hold that simply because the deed was executed in favour of the plaintiff which he admittedly managed to get with the help of a political party, the defendant no. 1 cannot be denied the benefit under the scheme. As a member of the displaced family he has also right to occupy the same.
14. Consequently, the defendant cannot be held to be licensee under the plaintiff. The defendant no. 1 has the right title interest over the property together with the plaintiff. The judgement impugned does not warrant any interference. The appeal merits no consideration and is dismissed, however, without cost.
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.)