

10.01.2023
SL No.30
Court No.8
(gc)

SAT 3 of 2015
CAN 1 of 2015 (Old No: CAN 3794 of 2015)

Gaur @ Gauranga Bauri & Ors.

Vs.

Arshu Ranjan Banerjee @

Bhurka Banerjee & Ors.

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular List on 5th December, 2022. The appeal is of the year 2015. Since then the matter is appearing in the list. The appellants have due notice of the matter. The appellants are not represented. The appeal is defective. Various defects have been indicated by the Stamp Reporter in its report dated 15.01.2015.

The judgment and decree dated 28.07.2014 of the First Appellate Court affirming the judgment and decree dated 30.08.2011 by the Trial Court in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal. Although, we could have dismissed the second appeal for non-removal of defects, we, however, decided to consider the materials on record in order to find out the second appeal involves any substantial questions of law. Briefly stated, the suit property originally belonged to Guhram Bouri and his brother Jyoti Bouri, who died leaving behind their

successors in interest namely Malati Bouri, Tulsi Bouri, Manik Bouri & Bhodu Bouri, whose names had duly been recorded in the R.S.R.O.R. in respect of the suit property. Subsequently, the RS recorded owners sold out the suit property along with others on 29.01.1971 by virtue of a registered deed of sale to one Falguni Sakha Banerjee, brother of the original plaintiffs, who died bachelor leaving behind his brothers, the original plaintiffs, as his legal heirs, who inherited the suit property. Subsequently, on demise of original plaintiff no.1, namely; Mukti Prasad Banerjee, his share in the suit property was devolved upon his legal heirs namely; plaintiff Nos.1(a) to 1(h). It was also the case of the plaintiffs/respondents that despite having their right, title, interest and possession over the suit property the defendants/appellants tried to interfere with their peaceful possession therein on 08.11.1998 which drove them to file this suit praying for 'declaration' of their title in respect of the suit property including 'permanent injunction' against the defendants/appellants.

The defendants in their written statement has denied the claim of parting with the suit property in favour of Falguni Sakha Banerjee on 29.01.1971. They had also claimed to be in possession over the suit property. According to them, the deed of sale dated 29.01.1971 was an outcome of false personification. The added defendants namely; Manik Bouri and Tulsi Bouri

had assailed the deed of title by taking a plea that in the year 1971 Tusi Bouri was minor. They have also fleshed out that the suit suffers from defect of parties. Accordingly, the defendants/respondents had sought for dismissal of the suit.

On the basis of the aforesaid pleadings, the Trial Court framed seven issues. Before the Trial Court as well as the First Appellate Court it was contended that the transferor of the deed on 1971, namely, Tushi Bouri was minor when the said deed was claimed to have been executed. It appears from record that initially the suit was filed against the two persons, namely; Shibu Bouri and Gour Bouri and the suit was decreed against them. Subsequently, in compliance with the order of Learned Appellate Court, made in Title Appeal No.09 of 2001, Smt. Tushi Bouri and Manik Bouri were brought into. Curiously, defendants/respondents nos.1 & 2 (the original defendants) had not pleaded in their written statement that Smt. Tushi Bouri was minor in the year 1971. It was the written statement filed by Smt. Tushi Bouri and Manik Bouri (added defendants) wherein such a plea had been ground for the first time.

The Trial Court as well as the First Appellate Court noticed inconsistencies in the pleadings and rejected the contention of the defendants with regard to their claim in respect of the property. In fact, the deposition of Gouranga Bouri, the D.W.1 and Sri Manik Bouri, D.W.2

were taken into consideration in deciding the matter in favour of the plaintiffs along with other evidence produced on behalf of the plaintiffs.

On the basis of such evidence, the findings arrived at cannot be said to be perverse.

Accordingly, the second appeal stands dismissed at the admission stage.

In view of dismissal of the second appeal, the applications also stand dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)