

21 08.06.23

Ct. No. 04

akd

S.A.T. 37 of 2016

Kuran Bauri & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Soumik Ganguli,

Mr. Sayan Roy.

... for the appellants.

Let the certified copy of the judgement and decree of the Trial Court filed today be tagged with the Memorandum of Appeal.

We do not find any involvement of substantial question of law in the instant appeal on the following findings:

The suit from which the instant Second Appeal arises was filed for declaration of right, title and interest against the State of West Bengal on the allegation that they suddenly found that the officials of the Forest Department planting trees at the suit premises.

The respondents contested the suit claiming that all along the said property was recorded as “Forest” and after promulgation of the West Bengal Estate Acquisition Act, the property vested with the State of West Bengal and, therefore, no right, title and interest ever passed on the plaintiffs/appellants nor such right is created in their favour.

It appears that one Anil Baran Layek earlier filed Title Suit No. 119 of 1984 against the State of West Bengal wherein the predecessor of the present plaintiffs were also arraigned as defendants therein seeking declaration of right, title and interest thereat. The said suit was contested by the State of West Bengal

contending that the suit property is a forest land and, therefore, no private individual can claim any right, title and interest thereupon.

The Trial Court disbelieved the stand of the State of West Bengal and decreed the said suit, which was challenged by filing two appeals; one by the State of West Bengal and the other by the predecessor of the present appellants. It was a stand of the predecessors that they have acquired the title by way of an adverse possession but ultimately the decree of the Trial Court was set aside holding that the property is "Forest land" belong to the State of West Bengal and simultaneously negatived the claim of the predecessor of the present appellants that they have perfected the title by way of adverse possession.

Astonishingly, the second suit was filed for partition amongst the private individuals claiming themselves to be the co-sharer in respect of the suit property. The said suit is decreed in preliminary form and pending at the stage of final decree. Taking advantage of the said preliminary decree it is sought to be contended by the appellants that the property is a joint property of the parties to the said partition suit and, therefore, the State of West Bengal cannot claim any right, title and interest thereupon.

The judgement passed in a proceeding against the parties are binding on them but a non party to the proceeding cannot be bound by the said judgement. The State of West Bengal was not a party to the partition suit and, therefore, the preliminary decree shall not stand in the way of their title to the said property.

Both the Courts have found that since the advent of CS and RS operation and even thereafter the properties are shown as “Jungle”, i.e. a forest land and, therefore, we do not find any infirmity or illegality in the judgement and decree passed by both the Courts below.

The appeal is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)