

25 07.07.23

Ct. No. 04

akd

S.A.T. 44 of 2023

CAN 1 of 2023

**Pratap Hazra @ Pratap Chandra Hazra
Vs.**

Sri Ashoke Kumar Hazra & Ors.

**Mr. Gopal Chandra Ghosh,
Mr. Prasanta Banerjee,
Ms. Indrani Nandi.**

... for the appellant.

The suit for recovery of possession upon revocation of licence is decreed by both the Courts below. The appellant being the defendant in the suit has challenged the concurrent finding of facts returned by both the Courts below solely on the ground that there is mis-description and/or wrong-description of the schedule property for which an application under Order XLI Rule 27 of the Code of Civil Procedure filed before the Appellate Court which was dismissed.

It is further contended that the Record of Rights stands in the name of plaintiff and defendant, which would indicate that the property was joint and, therefore, it cannot be held that the property is exclusively owned by the plaintiff/respondent. The aforesaid submission has been negated by both the Courts below for the reason that admittedly the sale deed executed by the erstwhile owner of the property evinces that the said property was sold to the plaintiff.

The title of the property flows from the deed executed and registered in accordance with the provisions of law and creates a title into a person. The parties are not governed by *Mitakshara school* of Hindu Law and there is no defence taken in this regard that the plaintiff being the *karta* of undivided Hindu family purchased the said property from the joint fund of the said family. The parties are governed by *Dayabhaga*

School of Hindu Law and naturally such defence has not been taken.

The moment the plaintiff has proved the title in respect of the property and it appears that the defendant/appellant has no title thereto, the logical presumption would be that the possession of the defendant in respect of the subject property is as permissive occupant. The defendant has not taken any defence of perfecting the title by way of adverse possession and, therefore, having failed to establish any right in respect of the subject property, we do not find any infirmity or illegality on the part of both the Courts below in decreeing such suit.

Whether there is a mis-description or wrong-description of the property cannot stand in the way of deciding an appeal. It is the duty of the Court executing the decree to consider the same. So far as the plea of rejection of an application filed under Order XLI Rule 27 of the Code is concerned, we do not find that there is any infirmity in the order passed by the Appellate Court in rejecting the same. The Appellate Court can permit the parties to adduce additional evidence provided the grounds enshrined under Order XLI Rule 27 of the Code are satisfied.

Furthermore, the document sought to be produced by way of additional evidence must have some nexus and/or impact on the core issue and the document, which cannot be regarded as a deciding factor, cannot be permitted to be produced by way of additional evidence, as it would tantamount to give premium to the party applying for additional evidence in securing an order of remand or in the event the Appellate Court itself decided to take evidence, it would cause delay in disposal of the appeal.

Whether there is an existence of the plot number as shown in the schedule of the plaint is immaterial for the purpose of deciding the case, the moment the plaintiff has proved the title over the suit property. The plea of entry in the Record of Rights standing in the joint name of the appellant and the respondent is also not tenable for the simple reason that the entry in the Record of Rights neither creates title nor extinguishes the title of a person. The correctness of the entry may be presumed for the purpose of possession, which is admitted in the instant case, as the plaintiff/respondent filed a suit for recovery of possession from the defendant/appellant upon revocation of licence granted to him.

We thus do not find any substantial question of law involved in the instant appeal.

The appeal is thus dismissed. In view of dismissal of the appeal itself the connected application is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

