

06 20.06.23

Ct. No. 04

akd

S.A.T. 45 of 2022

CAN 1 of 2022

Nawsad Ali & Anr.

Vs.

Khondekar Golam Kader & Ors.

Mr. Asis Chandra Bagchi

Mr. Mrinmoy Bhattacharyya.

... for the appellants.

Both the Courts below concurrently held that the plaintiffs/respondents have the right, title and interest in respect of the subject property and the defendants/appellants are permanently restrained from disturbing the peaceful possession and enjoyment of the plaintiffs/respondents in respect of the same.

The Title Suit No. 40 of 2003 was initiated by the plaintiffs/respondents seeking declaration of their right, title and interest in respect of the suit property and permanent injunction. It is a specific case of the plaintiffs pleaded in the plaint that the suit property originally belonged to one Ataul Haque and upon his death the same devolved upon his wife and a son. After the death of the wife of the original owner, the only son became an absolute owner thereof. The said son also died leaving behind him the plaintiffs as heirs and successors, who inherited the said property and possessing the same in commensurate with the shares held by them.

It is alleged that the defendant nos. 1 and 2 / appellants are wrongly and surreptitiously claiming ownership of the suit property on the basis of deed of transfer/conveyance and the entry made in the RS and LR Record of Rights. The purported deed of sale/conveyance is undoubtedly a conditional sale,

which is commonly known as “Kot Kobala” deed, which has been marked as Exhibit-3 in the said suit.

Since the reliance was placed upon the said conditional sale and the Record of Rights, an incidental question arose whether such entry made into the Record of Rights is erroneous and wrong.

The Trial Court held both the points in favour of the plaintiffs. So far as the nature of Exhibit-3 is concerned, it was found that it is a conditional sale, which is also not disputed by the defendants/appellants. The only point, which is urged before us, is that in absence of any express noting on the reverse of the said deed that the loan amount has been repaid, the presumption cannot be drawn that the loan amount was paid being one of the conditions in the said conditional sale deed.

Both the Courts found that the said deed was produced by the plaintiffs/respondents and the presumption, which can be drawn that the loan amount was repaid, cannot be said to be perverse. The moment the condition was attached to the same that in the event of payment of the loan amount, it will not fructify into an absolute sale; it would not be regarded as a sale conferring right, title and interest into the lender.

Section 58 C of the Transfer of Property Act, 1882 mortgage by conditional sale attaches to the condition that on default of payment of the mortgage on a certain date the same shall become an absolute. Once the conditional sale is executed, normally the deed remains in possession of the mortgagee for the simple reason that in default of the compliance of the condition

attached thereto the title would be perfected on the basis of the said deed.

Both the Courts found that the said conditional sale deed came from the custody of the plaintiffs being the borrower and there is a presumption that the said loan amount was repaid. Furthermore, the predecessor of the defendants/appellants never asserted the right, title and interest on the basis of the condition attached to the sale deed or that the loan amount was never repaid. Furthermore it appears that the Record of Rights stood in the name of Khandekar Fojle Haider, Khandekar Fajle Akbar and Khandekar Fajle Sovan.

The point is sought to be taken that the entry made in the Record of Rights raises presumption over the possession in respect of the suit property and the defendants/appellants try to assert that both the Courts below have wrongly held that the possession was never with the defendants/appellants.

There is no quarrel to the proposition that the entry in the Record of Rights raises a presumption in relation to possession though have no presumptive value on title. The entry in the Record of Rights neither creates title nor extinguishes it. The presumption is not static but can be rebutted by cogent evidence. The plaintiffs/respondents have rebutted the presumption in successfully proving that the aforesaid three persons, whose name are recorded in the RS Record of Rights, were never in possession for the simple reason that one of them became a Judge of Supreme Court, Pakistan; another was a Minister in Madhya Pradesh and living in Bhopal and third the Inspector of Police of Bangladesh.

The moment the presumption is rebutted, we do not find any infirmity in disregarding the entry made in the Record of Rights.

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

The appeal is dismissed. Accordingly the connected application is also dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)