

SAT 85 of 2016
CAN 9866 of 2017

Ramjan Ali @ Lutfar Rahaman
Vs.
Najmul Huda Chowdhury & Ors.

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

This matter is appearing in the list since 6th February, 2023.

The judgment and decree of the Trial Court dated 13th December, 2010 in a suit for preliminary for partition is a subject matter of challenge in the second appeal.

Briefly stated, the plaintiff/respondent no. 1 has filed a suit for partition in respect of A schedule property consisting of plot no. 2129, 2127 and 3386 in mouza Furfura under Jangipara P.S. claiming, inter alia, that Rajia Khatoon Bibi and Habiba Khatoon Bibi were the original owner of A schedule property. The plaintiff/respondent no. 1 Najmul Huda Chowdhury is the son of Rajia Khatoon who transferred her 50 per cent share in the A schedule property in favour of the plaintiff and the defendant no. 1 and the appellant Ramjan Ali along with other got other 50 per cent share of A schedule property by way of transfer from Habiba Khatoon. In spite of such transfer it is alleged that the defendant no. 1/ present appellant demanded the entire A schedule property on the plea of adverse possession in respect of 50 per cent share of the plaintiff. Hence, the respondent no. 1/ plaintiff filed the T.S. no. 85 of 1997 for partition.

On the other hand, the defendant no. 1/appellant denied the material allegations stated

by the plaintiff/respondent but admitted the transfer of share by Rajia Bibi to her son plaintiff/respondent. The denied the possession of the plaintiff/respondent and/or claimed the title by way of adverse possession.

On the basis of oral and documentary evidence the Trial Court declared that the plaintiff jointly has half-share in the suit property and the defendant no. 1 has half share also in the suit property and passed certain consequential directions.

The defendants preferred an appeal.

The appellate Court concurred with the findings of the Trial Court.

It appears from the pleadings as summarized by the Trial Court that the defendant claimed himself as bargadar and subsequently he claimed to have possessed the suit property by way of adverse possession. He claimed to have constructed pucca buildings in plot no. 2127 and 2125. However, from record of rights it appears that plot no. 2127 is a doba land. The defendant could not prove that they possessed the suit property uninterruptedly and continuously from a specific date for a period of twelve years.

They could not establish the three ingredients of adverse possession namely nec vi. Nec clam, nec precario, that is to say, without force, without secrecy and without permission. He also could not specify the date from which he was in adverse possession. It was on such consideration the claim of the defendant as owners in respect of two suits were denied. The appeal Court in affirming the order has taken note of the fact that the defendant no. 1 did not mention it either in the written statement or before the appellate Court the date from when he has possessed the share of the

plaintiff adversely. He admitted execution of the sale deed dated 28th October, 1997 and 19th July, 1992 respectively in favour of the plaintiff/respondent no. 1 by his mother Rajia Bibi.

The concurrent findings of fact. The observation of the appellate Court in this regard are:

“Ld. Court below has relied upon the assertion of the plaintiff to the effect that if the defendant no. 1/present appellant possessed the suit property after execution of sale deed dated 11.02.1990 he could not have possessed the suit property for more than 12 years. Ld. Court below has also explained that the pleading as well as evidence of the title suit goes to show that the defendant claimed himself as bargadar initially and subsequently, claimed himself the adverse possession of the suit property. But, there is no date from which he was in avrse possession in the suit property, rather it is deposed by him that he did not know the plaintiff and he had no knowledge about the existence of the plaintiff where it is necessary that the defendant should in possession of the suit property adversely within the knowledge of the actual owner. Ld. Court below also relied the settled principle in law in respect of possession of suit property by the plaintiff respondent stating to the effect that “the possession of one co owner reflects the possession of other co owners in respect of property in question and thereby Ld. Court has rightly adjudicated that the plea of defendant/appellant that the plaintiff/respondent has not in possession in respect of the suit property has no merit in the eye of law.”

In view thereof, we could not find any

substantial question of law involved in this second appeal. The findings of facts are based on proper appreciation of the evidence of law.

SAT 85 of 2016 stands dismissed along with the application.

(Uday Kumar, J.)

(Soumen Sen, J.)