

16.08.2023

Court : 04
Item : 10
Matter : SAT
Status : AA
Bench ID : 266147
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**SAT 115 of 2019
CAN 2 (8692) of 2019**

Md. Atiar Mondal
Vs.
Md. Safikul Islam Mondal & Ors.

**Mr. Tulsidas Ray, Advocate
Mr. Mahadeb Sarkar, Advocate
Mr. Bikash Chowdhury, Advocate**

.....for the Appellant

**Mr. Tapas Kumar Bhattacharya, Advocate
Mr. Aviroop Bhattacharya, Advocate**

.....for the Respondent

1. The instant second appeal is filed assailing a judgment and decree dated 17.01.2019 passed by the learned Additional District & Sessions Judge, Fast Track Court-II, Bongaon, North 24-Parganas in Title Appeal No. 2 of 2018 whereby the judgment and decree dated 31.05.2018 passed by the learned Civil Judge (Junior Division), Bongaon, North 24-Parganas in Title Suit No. 402 of 2010 was reversed.
2. The plaintiff/appellant filed the said suit for declaration and permanent injunction alleging that Abdul Aziz Mondal was owner of 5 annas in suit plot along with Soheb Hussain Mondal having 5 annas share and Samshunnecha Bibi having 1 anna and 2 gondas and Fatema Khatoon Bibi having 4 annas and 8 gondas in suit plot no. 108. It is further alleged that their names were duly recorded in the R.S. Record of Rights. After the death of Samshunnecha Bibi, his only son Soheb being the

legal representative inherited her share. Subsequently, the aforesaid three persons executed a deed of partition on 24.11.1954 wherein Fatema Khatoon Bibi was allotted 10 decimals of land. The said Fatema Khatoon sold the entire 10 decimals of land to Parul Bala Dasi and Madanlal Purohit by way of registered deed of sale dated 27.07.1961 who in turn sold the entire 10 decimals of land to Dulal Chandra Biswas, Birendra Nath Biswas and Kiran Chandra Biswas by registering the deed of sale on 01.12.1965. Subsequently, they sold, transferred and conveyed 5 decimals of land out of 10 decimals to one Haidar Ali Mondal on 17.02.1975 and remaining 5 decimals of land to the respondent nos. 2 and 3 on 19.12.1979. Subsequently, the said Haidar Ali Mondal sold, transferred and conveyed the said 5 decimals of land to respondent no. 1 on 09.01.1986.

3. It is thus contended in the plaint that the respondents have acquired right, title and interest in respect of 10 decimals of land comprised in Dag No. 108 which was originally allotted to Fatema Khatoon Bibi. In other words, the respondent traced their title through Fatema Khatoon and do not lay any claim in respect of the land allotted to the other co-sharers being a party to the said partition suit.
4. The defendant/appellant is claiming right through other co-sharers and does not make out any case relating to the aforesaid 10 decimals of land allotted to Fatema Khatoon Bibi by virtue of a deed of partition.

5. Astonishingly, the Trial Court dismissed the suit which is reversed by the Appellate Court. A point is raised by the appellant that he has not encroached upon the land originally belonged to Fatema Khatoon and, therefore, the decree for recovery of possession could not be passed.
6. Learned Counsel for the appellant/defendant submits that the claim that there has been encroachment over the suit plot, has not been proved and, therefore, the Court ought not to have passed the decree for recovery of possession.
7. In view of the specific stand taken before the Court below as well as before this Court that the appellant had no right, title and interest in respect of the suit property, the question of title which has been ultimately found in favour of the respondent, does not require any interference. The question is whether there has been an encroachment upon the suit plot, the Court of appeal below have recorded the factum of cutting the fruit bearing trees and encroaching upon the suit property and the statement of the respondents that the possession has been taken forcibly and illegally.
8. Even for the sake of an argument, the contention of the appellant is taken to be true that he never encroached upon the suit plot nor took the possession thereof, we do not find any justification in moving the High Court under Section 100 of the Code of Civil Procedure.
9. The recovery of possession is directed in respect of plot no. 108 to the extent of 10 decimals of land and, therefore, it is inconceivable and improbable

that there shall be any encroachment beyond the decreetal property nor the aforesaid stand raises any substantial question of law to be decided in the instant appeal.

10. Since the title has not been disputed in respect of the suit premises and the recovery of possession is directed in respect thereof and in view of the submissions having advanced before us, we do not find that the appellant has been able to make out a case for interference with the judgment and decree of the Trial Court nor it raises any substantial question of law.
11. Accordingly, the appeal being **SAT 115 of 2019** stands **dismissed**. No order as to costs.
12. The connected application for stay being **CAN 2 (8692) of 2019** also stands **dismissed**.

(Harish Tandon, J.)

(Ajay Kumar Gupta, J.)

