

02.03.2023
SL No.57
Court No.8
(gc)

**SAT 103 of 2013
CAN 2 of 2013 (Old No: CAN 2834 of 2013)
CAN 3 of 2023**

**Shibtala Palli Sangha & Ors.
Vs.
Mohanlal Roy & Anr.**

The plaintiffs/appellants are not represented, nor any accommodation is prayed for on their behalf.

The appeal is pending since March, 2013 for admission. No attempt has been made to move the second appeal. However, this matter is listed today for admission. In absence of the learned Counsel for the appellants, we read the judgment of the Trial Court as well as the First Appellate Court along with the grounds of appeal.

The appellate decree dated 02.06.2012 affirming the judgment and decree of the Trial Court dated 31.10.2010 in a suit for declaration is a subject matter of challenge in this second appeal. The plaintiffs claimed to be the persons from the locality were Radharani Dey @ Radha Rani Dasi, the original owner of the property used to reside. She was issueless. In the year 1965, due to her old age she handed over the seva puja to the local Hindu people of Shibtala Lane, Sheoraphuli and since then the said property is being looked after and managed by the local people and they

used to perform various religious functions and rites in the suit property. In the first half of 1966, Radharani left for Brindaban and since then the property is being looked after by the plaintiffs. It was alleged that the defendants are the local persons and more particularly, the defendant No.1 was the Secretary of the Committee of Shibtala Lane Committee and taking advantage of the helplessness of Radharani he in collusion with defendant No.2 and some other persons managed to have one sale deed executed and registered in their favour on 7th March, 2000 and on the basis of the fraudulent deed, the defendants are now trying to disturb the possession of the plaintiffs and also creating disturbance in the daily seva puja and maintenance of the property. The defendants contested the suit by filing the written statement. According to them, plot No.1237 under Khatian No.1698 of Mouza Sheoraphully has an area of 15 sataks and not 6 cottah 11 chittak 30 sqft. as alleged. The temple of Dharmaraj and Shiva is situated in a plot of land lying to the north of Shibtala land and temple of Narayan is situated outside the A schedule property purchased by the defendant. The temple of Narayan is a private personal temple of Smt. Radha Rani Dasi who gifted the entire property with temple to Sri Gangadhar De and Probhat Kumar De by a registered deed of gift in the year 1968 and thereafter she died in 1972. These persons used to possess the

entire property including temple and deity Narayan and performed seva puja by appointing priest and they transferred A schedule property to the defendants without the temple of Narayan. The defendants have meticulously stated that the transactions and disclosed the documents in support of their possession. The Trial Court on the basis of the pleadings and the evidence on record had arrived at a finding that the claim of the plaintiffs in the suit over A schedule property based on oral deed of gift by Radha Rani on the day of Asthami, 1965 was contrary to the proof as an oral gift is not recognized in the law. The learned Trial Judge has referred to Section 123 of the Transfer of Property Act and Section 17(1)(a) of the Registration Act, 1908. The learned Trial Judge in deciding the matter in favour of the plaintiffs had taken into consideration the certified copy of the deed of gift dated 13.09.1968 marked as Exhibit-K whereby Radha Rani Dasi gifted the property in favour of her husband's younger brother, late Naren De. The death certificate of Naren De was also produced and marked as Exhibit-F. The A schedule property was transferred to the defendants by a registered deed of sale dated 7th March, 2000 by Gangadhar Dey and Prabhat Kumar Dey for a valuable consideration. Prabhat is the son of late Naren De. Exhibits-B and B1 are the mutation certificate which appeared the name of the defendants. The L.R. Parchas

were also in the name of the defendants. The property was mutated in the name of the defendants. All the aforesaid exhibits would go to show that the defendants have become the lawful owner of the suit property. It was on such consideration, the suit was dismissed. The First Appellate Court in concurring with the findings of the learned Trial Court has observed that in the plaint it has been stated by the plaintiffs that they got the suit property by way of an oral gift which in law is not permissible. From the evidence of P.W-1 it appears that total area of the suit property (plot No.1237) was 15 decimal and suit is filed in respect of 10/10, 1/2 decimal and they are in possession in rest portion except property but he has no document to show that Radha Rani Dey has executed a gift deed in respect of the suit property in favour of general public. It further appears from the evidence of P.W-1 that defendants/respondents purchased the rest portion except the temple of Lord Narayan. The temple of Lord Dharmaraj and Lord Shiva are situated in one plot and temple of Lord Narayana is situated in suit plot. This clearly signifies that plaintiffs/appellants are not possessing the suit property.

The learned First Appellate Court has considered Exhibit-K which was challenged by the plaintiffs. D.W-4 was the employee of District Registry Office who proved the said certified copy. The said deed of gift was

executed on 13.09.1968 and by this deed Radhika Bala Dasi @ Radha Rani Dasi gifted the suit property along with other properties to Gangadhar Dey, Provat Kiren Dey and Mritunjoy Dey. A death certificate of Radhika Bala Dasi was filed and that was marked as Exhibit-F, which shows that she died on 09.06.1972. In the written statement it is mentioned that Radha Rani @ Radhika Bala executed the deed of gift. The initial burden to prove the gift was upon the plaintiffs but, except the pleadings no such evidence is adduced in support of their contention. Whereas the defendant produced the certificated copy of deed of gift in evidence and that has been proved in the evidence of D.W-4. At the time of exhibiting the deed no challenge was made. This D.W-4 has been cross-examined by the plaintiffs. So, the learned Court below did not find any reason to disbelieve the document where contrary is not proved. Exhibit-J is the R.S.R.O.R. of Khatian No.1698 of Mouza Sheoraphully, from which it appears that plot no.1237 measuring about 15 decimal was recorded in the name of Radha Rani Dasi. The assessment register of Baidyabati Municipality of the year 1994 to 1995 and 2002-03 were marked as Exhibit-H and Exhibit-I respectively, where the name of Gangadhar Dey and Provat Kiran Dey are found. The appellants/plaintiffs in the pleadings stated that defendant no.1 and defendant no.2 with a view to grab the A schedule property and

other properties in collusion with other persons namely Provat Kr. Dey and Gangadhar Dey got the suit property executed in favour of them by a sale deed dated 7th March, 2000, which is a false, fictitious, fabricated and without consideration and defendants have got no right, title and interest over the suit property. However, except pleadings no evidence is led by the plaintiffs to that effect. Provat Kiran Dey and Gangadhar Dey executed a deed of sale in favour of defendants in which it was marked as Exhibit-A. The sketch map annexed with deed Exhibit-A shows that the red marked boundary portion to the property was sold to the defendants excluding the Lord Narayan Temple. Exhibit-5 is the commissioner's report from which it appears that Lord Narayan Temple is situated on the eastern side of A schedule property. There are two access or passages to enter into the temple of Lord Narayan; one from the northern side and other from the eastern side. Exhibit-B and Exhibit B(i) are the mutation certificates in the name of defendants and Exhibit-C and Exhibit-C(i) are the L.R.R.O.R. in the name of the defendants. The documents support the case of the defendants.

The aforesaid discussion would clearly show that both the Trial Court and the First Appellate Court have carefully examined the evidence and on proper appreciation of the evidence dismissed the suit. On the

basis of the evidence on record, it cannot be said that the findings arrived at by the Trial Court or the First Appellate Court was perverse or based on no evidence. The civil matter is decided on the basis of the preponderance of probabilities. On the basis of the evidence on record, the findings arrived at was possible. We do not find any infirmity in the order of the Trial Court or the First Appellate Court.

For the reasons aforesaid, we do not find any reason to admit the second appeal as it does not involve any substantial question of law.

Accordingly, the second appeal stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission stage, the connected applications also stand dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)