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Ct-08

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SAT 207 of 2015
with
I.A No. CAN 1 of 2015(Old CAN No. 4625 of 2015)
CAN 2 of 2023

Amrita Lal Das & Ors.
Vs.
Nihar Bala Dey & Ors.

Mr. Saumyen Datta
Mr. Pinaki Brata Ghosh
... For the Appellants

The judgment of affirmation in a suit for declaration and permanent injunction decreed by the trial court in favour of the plaintiffs is the subject matter of challenge in this second appeal.

The facts admitted by the parties are that one Madhusudan Dey, as displaced person from East Pakistan, was allotted a plot of land in 1953 by the Refugee Relief & Rehabilitation Department of Government of West Bengal, Nadia District. After his death the property devolved upon the plaintiff no. 1, widow and her son, Amar Krishna Dey. Amar alleged to have executed a deed of sale on 4th December, 1972 in favour of the plaintiffs. The factum and existence of the said documents had surfaced when the defendants allegedly tried to obstruct the plaintiffs from enjoying the property in question.

The plaintiffs alleged that the defendant no. 1, namely, Amrita Lal Das, was a caretaker in the suit property and taking advantage of the absence of the plaintiffs he made interpolation and manipulated the record of rights to show that he is the owner of the property based on a sale deed dated 4th December, 1972.

The plaintiffs came to know the existence of

the said deed on 5th September, 2004 when the defendant no. 1 refused the plaintiffs to enjoy usufruct of the suit property on the plea that the property was sold by Amar on 4th December, 1972. The plaintiffs have categorically stated that the State of West Bengal is the owner of the suit property and Amar has no right, title and interest in respect of the suit property. Accordingly, such transfer by Amar is void ab initio.

The defendant nos. 1(b) to 1(h) and defendant nos. 5 and 6 contested the suit by filing separate written statement denying all the material allegations made in the plaint against them. In the written statement filed by the defendant nos. 1(b) to 1(h) it was alleged that from January 1970 Gayanendra Charan Das (original defendant no. 1 since deceased), the predecessor-in-interest of the defendant nos. 1(b) to 1(h) took forcible possession of plot nos. 574/619 and 675/5937 and since then he was in possession for more than 20 years and thereby acquired statutory right by adverse possession. Gayanendra thereafter purchased those property on 4th December, 1972 from Amar Krishna Dey, the son of the plaintiff no. 1. The name of the said defendant was recorded as “Bina Anumati Dakhal”. In January 1974 the plaintiffs demanded possession alleging that these are their property, which the said deceased defendant did not agree but driven them out from the suit property.

The defendant nos. 5 & 6 in their written statement alleged that the suit property belonged to the Refugee Relief & Rehabilitation

Department of Government of West Bengal and the said department allotted the suit property to Madhusudan Dey but no deed has been given to him or anyone conferring any absolute right and title of the suit property.

On the basis of the aforesaid pleadings the trial court framed 9 issues and answered the issues in favour of the plaintiffs partly.

The trial court as well as the first appellate court have proceeded on the basis that the defendants did not have their original title but Madhusudan was the absolute owner of the property in question. However, it is admitted position that the suit property was allotted to Madhusudan Dey by the Refugee Relief & Rehabilitation Department of Government of West Bengal and after his death Amar being the son of original allottee along with other legal heirs possessed the suit property, but as the suit property belonged to Government of West Bengal at that time Amar had no right to sale or transfer the suit property. So the sale deed executed by Amar on 4th December, 1972 was illegal and void and as such the defendant nos. 1 (b) to 1(h) or their predecessor-in-interest did not acquire any title.

It is trite law that a person is competent to transfer any property only if he has subsisting right, title and interest in it. It is admitted position that on the date of alleged transfer Amar had no right, title and interest over the suit property. Accordingly, the transfer made by Amar is illegal and void.

With regard to the possession, both the courts below had relied upon the report of the Commissioner. The report of the Commissioner

being Exhibit-8 dated 18th November, 1996 has been submitted by the District Rehabilitation Officer, Nadia in connection with the order dated 13th August, 1996 passed by Hon'ble Justice Mr. N.K. Moitra, the then Judge of High Court Calcutta, in connection with C.O 9206(w) of 1996 stating that Smt. Nihar Bala Dey is exclusively in effective possession over State Plot no. 277 and for the two agricultural plot nos. 312 and 734 some contradictory documents have been produced by both of Dey and Das family though Nihar Bala Dey's effective possession over the said two plots may not be denied straightway.

Both the courts considered Exhibit-8 and have arrived at a conclusion that the said exhibit issued by Government clearly mentioned that the suit property was allotted to Madhusudan and unless the document is cancelled by the Government, no one can deal with the property claiming ownership. The land record produced by the respondents in denying the rights of the plaintiffs has lost its evidentiary value as the title of the plaintiff is established by the document showing allotment by the Government to Madhusudan under Relief Rehabilitation Scheme 1953. This document clearly establishes that Amar had no title.

On such consideration, we do not find any reason to interfere with the well-reasoned order passed by the trial court and since affirmed by the first appellate court.

The appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage.

In view of dismissal of the appeal, nothing

remains to be decided in the application for stay being CAN 4625 of 2015 and the same is accordingly dismissed.

However, an application being CAN 2 of 2023 has been filed for recording the death of the appellant no. 1. The appellant no. 1, Sri Amrita Lal Das, died intestate on 26th June, 2015 leaving behind her widow, namely, Smt. Chhaya Das, as his legal heir and representative.

It is submitted that no contact was established with Smt. Chhaya Das. Be that as it may, for the purpose of purity of the record, we allow the application for recording the death of the appellant no. 1.

CAN 2 of 2023 is accordingly disposed of.

Office shall carry out the necessary amendment in the cause title of the memorandum of appeal.

The department has reported that original application being CAN 2 of 2023 has not been traced out. The photocopy of the said application supplied by the appellant shall be treated as original till the original application is traced out.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

