

Item-8. 21-04-2023

SAT 223 of 2015

sg Ct. 8

Shaila Bala Sarkar
Versus
Sri Sri Guru Gouranga Gandharbika Giridhari Jew & Ors.

Mr. Soumyadeep Biswas, Adv.
...for the appellant

The decree of reversal in a suit for title is the subject matter of challenge in the second appeal.

The plaintiff is the deity Gouranga represented by General Secretary of the Math. The plaintiff filed a suit alleging that the defendants were claiming ownership and possessory right in respect of the suit property on the basis of a deed alleged to have been executed by Sri Ramananda as a Sebayat of the said Math on 19th March, 2002.

We have carefully read the judgments of both the Courts.

The learned advocate for the appellants submits that the second appeal is required to be admitted as the plaintiff/Math has failed to discharge burden to prove with regard to the ownership of the property. It is submitted that Sri Ramananda from whom he purchased the property was a Sebayat and in that capacity he sold the property. The appellant has failed to establish that Sri Ramananda did not have the right as Sebayat to deal with the Math property.

The first appellate Court has proceeded on the basis that the defendants have admitted the ownership of the Math in relation to the said property. Title cannot be decided

on an admission. It is submitted that on the basis of the registered document for sale, it was incumbent upon the plaintiff to establish that the plaintiff has better title.

The documents primarily relied upon by the first Appellate Court in reversing the judgment of the trial court was the chain of title forming basis of LRROR in 1918 that was marked exhibit 2. The record clearly established that the deity is in possession of the property.

As observed in *Niranjan Chatterjee & Ors. vs. State of West Bengal & Ors.* reported in *(2007) 4 Indian Civil Cases page 765*, the record of rights does not create in title nor does it extinguish the title of lawful owner and the entry as a presumption of correctness which is, of course, rebuttable. Exhibit 2 clearly establishes the title of the deity in the property which could not be displaced as the onus on the defendants to establish that Ramananda as Sebayat as sebayat was competent to sell the property of the deity. Once it is established that the deity is owner of the property, no Sebayat has any right to delay with such property unless legal necessities are established. It can only be for the benefit of the deity. Ramananda in respect of the writ of summons being served upon him did not contest the suit. Once the plaintiff is able to discharge the initial onus of proving its title, it shifts upon the appellant to establish a better title over and in respect of the suit property.

If the Sebayat has any right to deal with the property of the deity, then any such transfer is void and ab initio. The deed under consideration does not say that the Sebayat sold the property for

legal necessity of the deity.

Under such circumstances, we do not find any reason to interfere with the order of the first appellate court.

The appeal fails at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)