

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE SIDE
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

SAT 95 of 2023

Laily Bibi Mondal & Ors.

Vs.

Abdus @ Abdul Khalek Mondal & Ors.

And

SAT 97 of 2023

IA No. CAN 1 of 2023

Laily Bibi Mondal & Ors.

Vs.

Abdus @ Abdul Khalek Mondal & Ors.

Appearance:

For the Appellants (SAT 95 & 97 of 2023)	:	Mr. Sounak Bhattacharyya, Adv. Mr. Chandra Nath Sarkar, Adv. Mr. Sounak Mandal, Adv.
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Judgment On	:	18.10.2023
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Harish Tandon, J.:

The instant second appeal arises from a judgment and decree dated 27th February, 2023 passed by the learned Civil Judge, Senior Division, 1st Court at Baruipur in Title Appeal No. 4 of 2009 reversing the judgment and decree of the Trial Court as a consequence whereof the suit filed by the appellant was dismissed. At the very outset, we must record that the

counsel of the appellant innocuously submits that since the instant second appeal against the judgment of reversal; it would proper to admit the appeal and decide the point as a 3rd Court. We could not accept the aforesaid submission that in the event one Court has decreed the suit and the appellate court has reversed the same, it would invite the automatic admission of an appeal under Section 100 of the Code of Civil Procedure. The Court can admit the appeal under the aforesaid provision of law provided it involves a substantial question of law which cannot be overlooked and/or bye-passed even in case of reversal of a judgment and decree of the Trial Court. In order to ascertain the involvement of the substantial question of law we invited the counsel appearing for the appellant to address us in this regard.

Before we proceed to deal with the submissions advanced by the counsel of the appellant and to arrive at the final decision whether it involves a substantial question of law or not, it would be profitable and relevant to quote the salient facts of the instant case.

The predecessors of the plaintiff-appellant filed a suit for declaration of title and permanent injunction restraining the respondents from interfering with the peaceful possession in respect of the suit property. The plaint case proceeds on an assertion that the predecessor-in-interest of the present plaintiff namely, Nefurali Mondal took the statement of the subject properties as a tenant and enjoyed the possession by making cultivation thereupon. Upon the death of the said Nefurali Mondal the subject property devolved upon the original plaintiff as his heir. It is further pleaded that the

record of right stands in the name of Nefurali Mondal and, therefore, the original plaintiff not only acquired the right, title, interest and possession in respect of the property by way of inheritance but also on the coming in force of the West Bengal Estate Acquisition Act, 1948 alleviated the status that of the raiyat. It is further averred in the plaint that the LR record of right contained the name of one Abdul Khalek Mondal and Sarafat Mondal erroneously and taking advantage of such erroneous entry in the record of right, the defendants are trying to deserve the possession of the original plaintiff. The heirs of the Sarafat Mondal were also impleaded as the parties but ultimately, the defendant No. 8 contested the said suit.

It is averred in the written statement that the possession all along remained with the said defendant and the instant suit is barred under Section 34 of the Specific Relief Act as the original plaintiff filed a suit simplicitor for declaration of his right, title, interest and permanent injunction without seeking a further relief of recovery of possession. The said contesting defendant disputed the stand of the original plaintiff but admitted that the Nafurali Mondal was the tenant in respect of the suit property under the landlord namely, Adyanath Mukhopadhyay and others and failed and neglected to pay the rent in respect of the subject properties. The said landlords filed a rent suit No. 1630 of 1943 in the Court of 1st Munsef, Baruipur for recovery of the rent which was decreed in the same year, the said decree was put into execution by levying the execution proceeding No. 117 of 1944 and by an order of the executing Court the right was put on auction sale. It is stated that the mother of the contesting

defendant, namely, Arijan Bibi purchased the same in the Court auction and got the possession of the suit properties through Court. It is a specific stand taken in the written statement by the said contesting defendant that Arijan Bibi being the Pardanashin Bibi could not take steps for correction of the record of right but remained in possession having acquired right, title and interest by virtue of a Court sale and upon her death the said contesting defendant is enjoying the suit premises uninterruptedly.

On the basis of the aforesaid rival titles having claimed in respect of the subject property the parties went into a Trial and the Trial Court held that since the said contesting defendant did not have any knowledge about the Court sale prior to the publication of the LR record of right and the moment the record of right is prepared finally it takes away the right of said contesting defendant. The Trial Court further held that the sale certificate does not confer title into the property and ultimately held that the plaintiff has miserably failed to prove his right, title and interest in respect of the suit property in its entirety as he has successfully proved his title in respect of 22 decimal of land out of the entire subject properties. The contesting defendant filed appeal before the Court and after the service of the notice of appeal the plaintiffs-respondents filed cross-objection assailing the part of the decree by which the declaration of title was restricted to 22 decimal of land. By the impugned order, the Appellate Court reversed the judgment and decree of the Trial Court as a resultant effect that the suit was dismissed and as a corollary effect, the cross-objection was also dismissed. The aforesaid appeals have been filed under Section 100 of the Code of Civil

Procedure assailing the main order by which the Appellate Court dismissed the suit and also the cross-objection.

Obviously, the moment the Appellate Court held that the plaintiff-respondent has failed to prove his right, title and interest in respect of the subject property and proceeded to dismiss the suit, the cross-objection which was restricted to the finding arrived by the Trial Court to the extent of ownership has to fall.

A point is sought to be taken by the counsel for the appellant that the Appellate Court has committed an error in not holding that the moment the predecessor of the contesting defendant purchased the subject property through Court sale, she is regarded as the intermediary and on promulgation of the West Bengal Estate Acquisition Act, 1948 the right of the intermediary vest with the State and the tenant was alleviated to the status of a raiyat. Such being the point urged before us, let us see whether such point has any legal foundation for the purpose of involvement of substantial question of law.

It admits no ambiguity that on promulgation of the West Bengal Estate Acquisition Act, 1948, the right of the intermediary above the raiyat stood vested with the State of West Bengal and the raiyat was regarded to hold the property under the State. Admittedly, Nefurali Mondal was a tenant in respect of the subject property and the record of right produced before the Trial Court would indicate that such nature of the possession was shown as “Bandabasta”. It is all along a specific case of the plaintiff that the said Nefurali Mondal took settlement of such land in such manner and did

not raise any question on the correctness of the entry made in the record of right. The nature of the possession in respect of the property was under the landlord and prior to coming in force of the West Bengal Estate Acquisition Act, 1948 a rent suit No. 1630 of 1943 was filed for recovery of arrear rent due to the landlord against the said Nefurali Mondal and the said suit was decreed and later on put in execution through execution proceeding No. 117 of 1944. The record would further reveal that the Executing Court passed the order for Court sale and the predecessor-in-interest of the contesting defendant purchased the same through Court sale and obtained the sale certificate in this regard. The aforesaid incident was much prior to coming in force of the West Bengal Estate Acquisition Act, 1948, by virtue whereof the right of the intermediary above the raiyat stood vested with the State. Though it is sought to be contended by the contesting defendant that by virtue of Court sale the entire property was purchased which does not appear to us have any legal standing in this regard. The aforesaid rent suit was filed for recovery of rent from a tenant by the landlords and in the event, a Court sale is directed it would be regarded in respect of a tenancy right and the right of the landlord does not extinguish by virtue of the same. However, the right of the landlord get extinguished on coming in force of the West Bengal Estate Acquisition Act, 1948 as intermediary and, therefore, the contention of the contesting defendant in this regard can be accepted to the extent that they elevated to the status of a raiyat by operation of the said Act. Once the rent decree is executed through Court sale, the sale certificate so issued extinguished the right of the tenant who was defaulter in payment of rent and the person who acquired right by virtue of a Court sale will be

regarded to have replaced the said tenant and became a tenant under the aforesaid landlord. The landlords have also accepted the same position as they were the decree-holder in the said execution case and, therefore, the right of the Nefurali did not remain in respect of the property. It is pertinent to mention that mere erroneous entry in the record of right neither creates title nor extinguishes the title though entry made in the record of right has a presumptive value of its correctness but such presumption is rebuttable in nature and in the event of Court finds from the relevant document affecting the right, title and interest in respect of the property, there is no difficulty on the part of the Court to declare such title irrespective of the fact that the name of the person in whose the Court found title is not recorded in the record of right. The records of rights are prepared for the purpose of making a person responsible for land revenue and no further.

A point was taken that the sale certificate can at best be regarded as evidence in title but does not assume the character of a document of title. The Apex Court in ***B. Arvind Kumar vs. Govt. of India & Ors.*** reported in ***(2007) 5 SCC 745*** observed that when a property is sold by public auction in pursuance of the order of the Court and the bid is accepted and the sale is confirmed by the Court in favour of the intending purchaser, the sale become absolute and the title vests in the purchaser.

It admits no ambiguity that upon the issue of the sale certificate, the sale becomes absolute; there is no necessity of further deed of transfer to be executed by the Court. The sale certificate being the evidence of title and

the document of title confers absolute title into the purchaser and, therefore, the contention of the appellant in this regard is not accepted.

We thus do not find any substantial question of law involved in the instant appeals, those are dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)