24.02.2023
SL No.22
Court No.8
(gc)

SAT 269 of 2016

Anil Chandra Das
Vs.
Rabin Debnath & Ors.
(Nimai Debnath since deceased)

Mr. Gouranga Kumar Das,
Ms. Swati Mandal,
...for the Appellant.

We have heard the learned Counsel for the appellant.

The appeal is arising out of a judgment and decree passed on 4th April, 2016 by the learned Additional District Judge, Kakdwip, South 24-Pargranas affirming the judgment and decree dated 29th April, 2013 passed by the learned Civil Judge (Junior Division), Kakdwip in a suit for declaration of right, title, interest and permanent injunction. Both the Courts have arrived at a finding that the plaintiff was unable to prove its title to the property. Both the Courts relying upon the decision of the Hon'ble Supreme Court reported in ***AIR 1964 SC 136*** observed that the plaintiff has failed to prove the chain of title, his possession and nature of the land over which the plaintiff claims ownership.

Mr. Gouranga Kumar Das, learned Advocate appearing on behalf of the appellant has submitted that the title of the plaintiff is adequately established from the sale deed exhibited in the said proceeding and there is no proof that the property was acquired by the State. It is also submitted by Mr. Das that there is no proof regarding issuance of homestead patta either in respect of L.R. Plot No.4513 or L.R. Plot No.4512 and the mere finding by the enquiry officer with regard to the nature of the property as homestead is not sacrosanct. It is submitted that both the Courts have failed to appreciate that the property purchased by the plaintiff is the Bastu along with a small pond adjacent to it and there is no evidence on record to show that it was ever treated as a homestead land.

We have carefully read the judgments of the Trial Court as well as the First Appellate Court. The Trial Court has considered the factual aspect of the matter and the evidence in great detail. The plaintiff claims right, title and interest over 5 decimals of land out of 13 decimals in R.S. Plot No.2932/7506 corresponding to L.R. Plot No.4513. The plaintiff produced three sale deeds all dated 27.04.1985 to prove his ownership. He claimed to have sold 8 decimals of land by executing a registered sale deed being No.4465 dated 12.04.1996. The plaintiff in his chief has stated that the respondents have clandestinely managed to obtain homestead in respect of 13 decimals of land which was subsequently cancelled by the J.L.R.O. Kakdwip by an order dated 26.05.1986. During the cross-examination he has admitted that he was out of possession from the year

2009. Defendants have got the homestead patta in respect of the suit dag measuring about 13 Satak (dated 10.09.2012). The entire 5 decimals of the suit property are being unauthorizedly occupied by the defendants. He admittedly could not identify the portion of the land forming dag no.4513 measuring about 5 decimals out of 13 decimals over which he has claimed ownership about the nature of the land he stated that it is a small doba whereas in the L.R.R.O.R. the said land was mentioned as Bastu land. The plaintiff in his evidence has stated that he purchased 3.5 decimals of land from one Sankar Prosad Samanta on the basis of Panchayat Certificate. The rest of the property he claimed to have purchased from one Bhabani Prosad Samanta on the basis of Panchayat Certificate. He did not make any further enquiry with regard to the right, title and interest of the Bhabani or Sankar independently. The appellant also admitted that Plot Nos.7507, 7252 and 7746 were recorded in the name of Kedar Nath Bhagat and Motilal Bhagat and the defendants are in possession of Plot Nos.7507, 2930/7252 and 2933/7746 by making construction thereof. He also admitted that the land he alleged to have purchased does not contain the description of the boundary of the land and the real picture and status of the suit land can only be established by examination of any survey passed commissioner. He did not apply for appointment of any survey passed commissioner for proper identification of the suit plot. During his cross-examination, the enquiry report by the B.L.L.R.O. and the order passed in Misc. Case No.29/1999 were marked as Exhibit-B Series. The certified copy of the order passed by W.B.L.R.T.T. in O.A. No.142/99 was also marked as Exhibit-C on behalf of the respondents. The respondents in support of their claim over 13 decimals of land have relied upon the relevant Khatians and the ROR. They have referred to the proceedings initiated by them by filing a writ petition for rectification of the ROR. They have disclosed the order by which the Revenue Officer was directed to record 13 decimals of land of R.S. Plot No.2932/7506 in their favour. They have specifically stated that Snehalata Samanta, Binata Bhakta and Bhabani Prosad Samanta had no right, title and interest over the suit plot. They have no transferable interest. During cross-examination, the defendants have stated that there is no pond in the suit plot and in this regard he has relied upon Exhibit-B. The said document is vital as it would appear from the order that a direction was passed for cancelling the name of Anil Chandra Das, the plaintiff herein from the R.S. Plot No.2932/7506 corresponding to L.R. Plot No.4512 of Mouza – Ganeshpur in compliance of the order in the writ petition No.25177 of 1997 by which B.L.L.R.O, Kakdwip was directed to dispose of the representation dated 6th November, 1997 of the respondents. On the basis of the aforesaid direction, the Misc. Case No.29 of 1999 was initiated and in the said proceeding, an order was passed cancelling the earlier order recording the name of the plaintiff was set aside. The said order was unsuccessfully challenged before the W.B.L.R.T.T. The writ petition filed against the said order was also not pursued. Apart from the aforesaid, the observation of the Appellate Court with regard to the homestead patta is relevant. The observations are:-

> *"At the time of argument a new issue has been raised by the plaintiff regarding issuance of homestead patta either in respect of L.R. Plot No.4513 or L.R. Plot No.4512. From the order sheet of Misc. case no.29/1999 (Ext.-B) filed before the B.L & L.R.O., Kakdwip it is found that the alleged homestead patta has been issued in the name of defendants in respect of R.S. plot no.2932/7506 corresponding to L.R. plot no.4512 measuring about 13 decimals. Although, it is found from the sketch map of Enquiry Report (Ext.-B(i) submitted by Amin attached to the B.L & L.R.O, Kakdwip that corresponding R.S plot no.2932/7506 is L.R plot no.4513. Not only that to resolve the aforesaid dispute I have given a direction (order no.35 dated 28.02.2013) to the concerned B.L & L.R.O, Kakdwip to submit a report on the three specific point. After communicating the said order, the B.L & L.R.O., Kakdwip submitted his report which has been marked as Ext.-F. From the Ext.-F it is crystal clear that the corresponding R.S plot no.2932/7506 is L.R.*

plot no.4513 measuring about 13 decimals nor the L.R plot no.4512. From Ext.-F it is also found that corresponding L.R. no.4512 are R.S. plot no.2933/7507 and 2933/7255 respectively measuring about 5 decimals nor 13 decimals."

It would be evident from the evidence on record that the entire 13 decimals of suit plot of land has already been vested by the State of West Bengal in favour of the defendants by virtue of Misc. Case No.29/1999 that is prior to the acquisition of the land by the plaintiff. The plaintiff also could not produce any Khazna/Government rent receipts from 1986 onwards. The orders of B.L.L.R.O in Misc. Case No.29/1999 (Ext.-B) was not disturbed by any Court. In fact, the proceeding attained its finality by virtue of the order passed by W.B.L.R.T.T.

The concurrent findings of fact unless are perverse should not be taken lightly in a second appeal. We do not find any substantial question of law involved in this second appeal.

The second appeal, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.) **(Soumen Sen, J.)**