

05.01.2023
SL No.103
Court No.8
(gc)

SAT 168 of 2014
CAN 1 of 2015 (Old No: CAN 8442 of 2015)

Samir Debnath
Vs.
Debabrata Ghosh & Ors.

Soumen Sen, J. (Oral): This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular List on 5th December, 2022. Since then the matter is appearing in the list. The appellant has due notice of the matter. The appellant is not represented.

The appeal is defective. However, we ignore the defects as we found such defects to be formal in nature.

The appellate decree dated 27th January, 2014 affirming the judgment and decree of the Trial Court dated 27 January, 2014 affirming the judgment and decree of the Trial Court dated 27th May, 2013 and 3rd June, 2013 respectively in T.S. No.102 of 2008 is a subject matter of challenge in this appeal. The plaintiffs filed a suit for recovery of khas possession after revocation of licence. We have carefully read the judgment of the Trial Court as well as the First Appellate Court. Briefly stated, the plaintiffs are the descendants of one Bholanath Ghosh. Nani Gopal @ Ranjit Ghosh is one of the sons of Bholanath Ghosh. The plaintiff Nos.1, 2 and 3 are sons of Nani Gopal Ghosh. Subrata Ghosh is the

other son. He died prior to the institution of the suit. The plaintiff Nos.4, 5 and 6 are the legal heirs of Subrata Ghosh. The R.S.R.O.R. marked as Exhibit-2 shows that plot no.4014 has been recorded as dwelling house having .14 decimals of land in the name of Bholanath Ghosh, grandfather of the plaintiff nos.1-3. From Exhibit-3 series, it appears that the four sons of Nani Gopal @ Ranjit Ghosh who is one of the two sons of Bholanath Ghosh have got .7 decimals of land in the suit plot and was holding the said property jointly after being recorded in finally published L.R.R.O.Rs which are four in number by a legal notice, the licence granted to Samir Debnath was revoked. In opposing the claim for eviction, the defendant produced some documents showing that his family members have been residing in the suit property. According to the defendant, the plaintiffs are not the owners of the property in question. In support of such plea, the defendant contended that it is unusual for the plaintiffs to allow Samir Debnath to continue in possession even after the death of Bholanath Ghosh. The defendant impliedly had accepted the ownership of the plaintiffs. The defendant was unable to establish that he is the owner of the suit property. He could not produce any document in favour of his right, title and interest over the suit property. During the cross-examination of D.W.1, Samir Debnath could not establish that he is a tenant in the suit property nor could he submit any document to

support his right of residence or occupation. It was contended on behalf of the defendant that Bholanath Ghosh and his father proposed to purchase the suit property but the said transaction the defendant was unable to establish at the trial. From the documentary and oral evidence, it is quite clear that the ownership of the suit property to the extent of .7 decimals of land is in favour of the plaintiffs. In the judgment of ***Radha Prosad Sharma v. Bejoy Sett***, reported in ***1996 WBLR (Cal) 226: 1996(2) CalLT 52 (Cal): 1996(1) CLJ 557(cal)***, it has been observed that licence is revocable at the will of the grantor but the licensee should be informed about such revocation requiring him to vacate the licensed premises. He was initially a permissive possessor but after the legal notice was served, he continued to remain in possession without giving up possession thereby he became a trespasser in respect of the suit property. The service of notice was duly proved. In view of Section 116 of the Indian Evidence Act A licensee cannot dispute the title of the licensor (***see. Rashamoy Chowdhury v. Anil Krishna Dawn & Ors.***, reported in ***1998 (1) CLJ 295 (paragraph 12 & 13)***). The learned Trial Court as also the First Appellate Court did not accept the submission on behalf of the appellant that the suit is bad in absence of all the co-owners of the property in question. In rejecting the submission, the First Appellate Court had relied upon the Full Bench decision of the Himachal Pradesh High

Court in ***Kumari Kanchan & Ors. v Bishan Das & Ors.***, reported at **2003 (2) CCC 333 (HP): MANU/HP/0070/2003** (paragraph 12), and the decision of Full Bench of Patna High Court in ***Ram Niranjana Das & Anr. v. Loknath Mandal & Ors.*** reported in **AIR 1970 Patna 1** in which it has been clearly stated that in a suit for possession of property by a co-owner against trespasser other co-owners are not required to be impleaded. In the ***The Midnapur Zamindari Co. Ltd. V. Naresh Narayan Roy & Ors.*** reported in **Vol. 29 CWN 34** the privy council discussed the right of a co-sharer in the following words:

“..... Where lands in India are so held in common by co-sharers, each co-sharer is entitled to cultivate in his own interests in a proper and husband like manner any part of the lands which is not being cultivated by another of his co-sharers, but he is liable to pay to his co-sharers compensation in respect of such exclusive use of the lands. Such an exclusive use of lands held in common by a co-sharer is not an ouster of his co-sharers from their proprietary right as co-sharers in the lands. When co-sharers cannot agree as to how any lands held by them in common may be used, the remedy of any co-sharer who objects to the exclusive use by another co-sharer of lands held in common is to obtain a partition of the lands. No co-sharer can, as against his co-sharers obtain any jote right, rights of permanent occupancy, in the lands held in common, nor can he create by letting the lands to cultivators as his tenants any right of occupancy of the lands in them.....”

In **Ram Niranjana Das** (*supra*) in paragraph 8 the law has been summarized in the following words:

“It is well settled that merely a possessory title when confronted with a better title, will yield place to the better title which must prevail over a trespasser’s possessory title pure and simple. A co-sharer, having an interest in a property, jointly with others, is apparently a person with a better title than a trespasser. Following this principle there is no reason why his suit should not be decreed. One of the various co-owners of a property, if in possession, will be deemed to be in possession on behalf of all the co-owners, and it is for this reason that his possession, in law, is not regarded as adverse to other co-owners unless there is distinct proof of ouster. In that view of the matter also, the interest of an undivided co-owner or co-sharer must be taken to cover every inch of land which may be the subject-matter of dispute as belonging to the co-owners”.

The title of the plaintiffs in respect of the property cannot be disputed. There are other co-owners. The schedule of the plaint shows 14 decimals of land out of which from the documents on record it appears that the plaintiffs as descendants of Noni Gopal @ Ranjit have inherited .07 decimals of land jointly. The certified copy of R.S.R.O.R. in respect of the suit plot no.4014 and Exhibit-3 series, namely, four certified copies of finally published L.R.R.O.R in the name of Ashoke Ghosh and his two elder brothers and Subrata Ghosh, the ownership of the plaintiffs to the extent indicated above is clearly established.

If we accept that it is an ancestral property of the plaintiffs in which they were residing on the death of the original owner, they inherited the property to the extent of their share. Exhibit-6, Exhibit-6/1 and Exhibit-6/2 are three death certificates in respect of Bholanath Ghosh, Ranjit Ghosh and Subrata Ghosh respectively read with Exhibit 2 and 3 series established the right, title and interest of the plaintiffs in respect of the property in question.

The concurrent findings of facts with regard to the ownership of the plaintiffs and the appellant is a licensee are based on cogent and credible evidence. The concurrent findings of facts do not appear to be perverse or based on evidence.

On the basis of the aforesaid evidence on the preponderance of the probabilities, the suit is decided in favour of the plaintiffs. We do not find any reason to interfere with the concurrent findings of facts. The second appeal, accordingly, stands dismissed at the admission stage.

In view of the dismissal of the second appeal at the admission stage, the application also stands dismissed.

However, there shall be no order as to costs.

I agree

(Soumen Sen, J.)

(Uday Kumar, J.)