

19.01.2023
SL No.47
Court No.8
(gc)

SAT 283 of 2016
CAN 1 of 2016 (Old No: CAN 7909 of 2016)

Dolgobinda Mahato & Ors.
Vs.
Golok Mahato & Ors.

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 appeal is of the year 2016. The appellants are not represented.

The appeal is defective. The Stamp Reporter in its report dated 19th July, 2016 has referred to various defects. In spite of due notice, no attempt has been made to cure the defects.

The appellate decree dated 29th February, 2016 affirming the judgment and decree of the Trial Court dated 4th May, 2012 in a suit for declaration and permanent injunction is a subject matter of challenge in this second appeal. The declaration is dependent upon an adjudication in respect of the gift. Briefly stated that the suit land and other land were previously belonged to one Shraban Mahato who died leaving behind his wife/Alta and widowed mother Jamuna. Alta and widowed mother Jamuna have inherited the property of Shraban Mahato and they are in joint mess. After the death of Jamuna,

her Nanad/Bhanu and sons of Nanad namely, Thakurdas came and started to reside there and used to cultivate the land of Shrabhan. It is also stated that Bhanu died leaving her four sons including Thakurdas but other three brothers stayed in the village Bongabari and used to look after their own land. Taking the advantage of innocence of Alta, Thakurdas, set up his own title by recording his name during R.S. Operation alleging that Alta had got remarried after the death of Shrabhan. On the strength of such forcible entry, Thakurdas dispossessed Alta from the suit land and other land in Baishakh, 1371 B.S. Immediately thereafter Alta has filed a suit for recovery of possession which was finally disposed of and Alta got her property back including the suit land on 10th May, 1975. On 6th September, 1975, Alta Mahato sold schedule land along with other land to Niranjana Mahato and Anila Mahatani by a registered sale deed. Subsequently Niranjana and Anila sold schedule land property to Lilu Mahato/plaintiff No.3. Niranjana died leaving behind three sons and widowed wife who are the proforma defendant Nos.7 to 10 and they have sold the schedule -(b) land to the plaintiffs by executing and registering a sale deed in the year 2006. Since purchase the plaintiffs are in possession of their property but on 23rd September, 2008 and 11th October, 2008 they have received notices under Section 144 of the Cr.P.C. from where they came to know that the defendants have purchased the suit land from

Thakurdas or his descendant. Since then the principal defendants are threatening the plaintiffs that they will not allow the plaintiff to cultivate the suit land. The cause of action arose on and from 23rd September, 2008 and 11th October, 2008. In order to establish his title, the plaintiff has filed Exhibit-1: Registered sale deed no.4976 dated 18-10-06, Exhibit-1/1, signature of the deed writer of registered sale deed no.4976 dated 18-10-06, Exhibit -2: Registered sale deed no. 4333 dated 27-09-05, Exhibit - 2/1: Signature of the deed writer of Registered sale deed no.4333 dated 27-09-05. Exhibit-3: Certified copy of Judgment and decree in T.S. Case no.20/1967. Exhibit-4: Certified copy of Judgment and decree in T.S. Case No.139/1968. Exhibit-5: Certified copy of the order passed by Hon'ble High Court Kolkata, dated 5-02-1990. Exhibit-6: Certified copy of the deed being no.9853 for 1975 on 6-09-75. Exhibit-7: Carbon copy of the notice in Misc Case no.477/08. Exhibit-8: Carbon copy of the notice in Misc Case no.509/08 and produced oral evidence.

Before the Trial Court, the defendants have contended that the suit land previously belonged to one Natu Mahato who is the father of Shraban and Bhanu. Shraban died leaving his widowed mother and wife Bhanu also died leaving her five sons including Thakurdas. On the request of Alta the name of Thakurdas was recorded during R.S. Operation. Thakurdas Mahato was in

possession of the suit land as the delivery of the possession by the order of the Court is merely a paper transaction. The deed in question is forged. Niranjana and Anila never possessed the suit land. The alleged deed is forged one. On July, 2006 the defendants have purchased the suit land from the wife of Thakurdas and since then they are in possession of the schedule (b) land. No cause of action arose. It appears that Alta has filed a suit for recovery of possession which was finally disposed of and Alta got her property back including the suit land. This particular contention of the plaintiff is supported by Exhibit-3: Certified Copy of Judgment and decree in T.S. Case No.20/1967, Exhibit – 4: Certified Copy of Judgment and decree in T.S. Case No.139/1968. Exhibit-5: Certified Copy of the order passed by Hon'ble High Court Kolkata, dated 5-02-1990.

From the aforesaid mentioned documents produced by the plaintiffs, it can also be seen that Alta is the rightful owner of the suit land along with some other land. On 6th September, 1975, Alta Mahato sold schedule land along with other land to Niranjana Mahato and Anila Mahatani by a registered sale deed. To support this contention the plaintiff has filed Exhibit-6: Certified Copy of the deed being no.9853 for 1975. From the said document it is crystal clear that Alta Mahato sold schedule land along other land of Niranjana Mahato and Anila Mahatani.

The plaintiff contended that Niranjan and Anila sold schedule A property to Lilu Mahato/plaintiff no.3. To support this contention the plaintiff has filed Exhibit-2: Registered sale deed no.4333 Dated 27-09-2005, Exhibit – 2/1: Signature of the deed writer of Registered sale deed no.4333 dated 27-09-2005. The plaintiff further contended that Niranjan died leaving behind three sons and widowed wife who are the proforma defendant nos.7 to 10 and they have sold the schedule –B land to the plaintiffs by executing and registering a sale deed in the year 2006. To support this contention the plaintiff has filed Exhibit-1: Registered sale deed no.4976 dated 18-10-06, Exhibit – 1/1: Signature of the deed writer of Registered sale deed no.4976 dated 18-10-06.

The oral and documentary evidence clearly shows that the plaintiff No.3 has been able to establish his right, title and interest in respect of the suit property. The First Appellate Court on re-appreciation of the aforesaid evidence affirmed the order of the learned Trial Court. In concurring with the said finding, the First Appellate Court has taken into consideration the satisfaction of the decree as would be evident from Exhibit-6, Title Execution Case No.51/1968 by delivery of possession on 10th May, 1975. The plaintiffs were also able to establish that they were in possession of Alta after they purchased the property.

The concurrent findings of facts arrived at by both the Courts are based on both oral and documentary

evidence and is a probable and possible conclusion that can be arrived at on the basis of such evidence.

In view thereof, the second appeal stands dismissed at the admission stage.

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

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)