

SAT 288 of 2016

**Ranjan Neogi
Vs.
Sailen Pal & Ors.**

None appears on behalf of the parties.

The appeal is appearing in the list since 6th February, 2023.

The appellate judgment and order dated 28th March, 2016 and 11th April, 2016 affirming the judgment and decree passed by the Trial Court on 22nd April, 2008 in a suit for declaration and injunction.

We have read the judgment of both the Courts. We have considered the grounds of appeal.

Briefly stated, one Pradhan Pal was the original owner of the property in question. He purchased the property from one Krishna Lal Chatterjee by a registered sale deed. Pradhan Pal died intestate in 1969 as a bachelor leaving behind his aunt Nirmala Nalini (Plaintiff no. 1's predeceased grandmother), one brother named Rabin Pal (predecessor of the defendant nos. 1 to 6) and one sister named Smt. Sandhya Pal (the defendant no. 7) as his relatives.

After the demise of said Pradhan Pal, Nirmala Nalini Debi, Rabin Pal and Sandhya Pal were enjoying and possessing the suit properties described in the schedule of the plaint in 'Ejmali' on the basis of their mutual understanding and as the days passed the said Nirmala Nallini Neogi died in the last part of August, 1973 leaving behind Balai Chandra Neogi who is the father of the plaintiff and the only son of deceased Nirmala Nalini Neogi. Thus, after the death of Nirmala Nalini Neogi plaintiff's father Balai Chandra Neogi, Rabin Pal and Sandhya Pal had been continuing in the suit property and enjoying as well

as possessing the same under mutual understanding.

Rabin Pal (predecessor of the defendant no. 1 to 6) and the defendant no. 7 namely Sandhya Pal both were residing at Calcutta while the suit properties described in the schedule of the plaint are situate at Dharampur under P.s. Chinsurah. Thus, making it difficult for Sandhya Pal and Rabin Pal to enjoy the suit properties they, therefore, offered to sell out their entire share of the suit properties to Balai Chandra in the year 1974 to which Balai Chandra agreed to purchase the shares of Sandhya Pal and Rabin Pal at a consideration of Rs.2000/- only. Balai Chandra Neogi paid the consideration money in February, 1974 to the said Rabin Pal and Sandhya Pal and also gave Rs.200/- as miscellaneous costs for preparation of such deed etc. to them. They in turn gave all the parent documents of the suit properties to the said Balai Chandra and also handed over and/or delivered the vacant khas possession of the suit properties to the said Balai Chandra but as the said Balai Chandra was awfully busy with his services at Varangaon, Maharastra, he entrusted his maternal brother Panchu Gopal Neogi to look after all his properties including the suit properties but since various sorts of legal formalities were to be observed and requisite documents were to be made before such sale deed in respect of the suit properties were to be executed, Rabin pal took times for executing the sale deed between Rabin Pal and Balai Chandra Neogi and/or his agent Panchu Gopal Neogi alies Gopal Neogi. The plaintiff's predecessor Balai Chandra retired from his service in November, 1975 and started looking after his all properties personally and after the demise of Balai Chandra on 23/10/1998, the plaintiffs had been owning and possessing all such properties including the suit properties

described in the schedule of the plaint. But due to the ill-luck of the plaintiffs, the said Rabin Pal died intestate on 04/08/1977 leaving behind the defendant nos.1 to 6 and, therefore, after the death of Rabin Pal, the plaintiffs were owning and possessing the suit properties described in the schedule of the plaint exclusively as owner continuously and without any interruption with the knowledge of the said Rabin Pal and then that of the defendants after the death of Rabin Pal. The plaintiffs thus was possessing the suit property, as of right, freely and adversely to the whole world including the said Rabin Pal and the defendants, by asserting their rights as against them more than 25 years and as such the plaintiffs have acquired an exclusive and indefeasible right of ownership over the suit properties described in the schedule of the plaint. Alternatively, all the terms and conditions of part performance have been performed and the plaintiff's said predecessor including the plaintiffs had been always ready and willing to perform their part. So, the plaintiffs were entitled to get the benefit of section 53A of Transfer of Property Act.

During such possession, the plaintiffs' predecessor Balai Chandra for the sake of convenience and better enjoyment merged the suit 'Doba' in plot no.824 with his other tank situate at plot no.823 and had been doing pisciculture all these years by giving license to one Balai Lal Chatterjee and then to his son Sri Rajesh Chatterjee and was enjoying the usufructs thereof for all these years quite openly and adversely without any interruption and with the knowledge of said Rabin Pal and the defendants continuously and adversely to them. After the demise of Balai Chandra Neogi, the plaintiffs stepped in the shoes of their said predecessors and had been owning

and possessing the suit property in the similar way as their predecessor quite openly, adversely and without any interruption and within the knowledge of the defendants. After having enjoyed the suit property for so many years, at present as the price of the properties had been raising remarkably, the defendant no.7 on 05/12/1999 suddenly appeared and made enquiry about the suit properties described in the schedule below by falsely asserting the defendants as owners which had clouded the interest of the plaintiffs over the suit properties.

Nirmala Nalini Neogi/Debi alleged to be the aunt of Pradhan Paul and the grandmother of the plaintiff no.1 who was actually the maternal aunt (masi) of Pradhan Paul who had her separate family having husband, son and never resided jointly with Pradhan Paul. The brother of Pradhan Paul namely Rabindra Nath Paul and sister Sandhya Pal resided with Pradhan Pal in joint mess. The said Pradhan Pal was unmarried till his death. Rabindra Nath Paul brother of Pradhan Paul died leaving his wife, daughter and one son being defendants no.1 to 6 and Smt. Sandhya Pal being defendant no.7 who is still unmarried. So, after the death of Pradhan Pal, actual legal heirs were his brother and sister and their descendants and as such the defendants no.1 to 7 were the heirs of the suit property. Moreover, there was no question or sanctity of Nirmala Nalini neogi being a legal heir of Pradhan Paul. Plaintiffs had filed the suit with a mischief design, ulterior motive to snatch the property of the defendants without any legal basis. The defendants also categorically denied about any agreement either in written form or oral between Rabindra Nath Pal or the predecessor of the plaintiffs Balai Chandra Neogi, neither the said Balai Chandra Neogi paid Rs.2000/- as earnest money to

Rabindra Nath Pal or any maternal brother of Rabindra Nath Pal namely Panchu Gopal Neogi. The plaintiffs suppressed the facts and out of avarice they had knitted a fine imaginary and fictitious story to gain something without any legal basis. It was further alleged by the defendants that the plaintiffs tried to record their names in the local office of B.L. & L.R.O. but failed to do so.

Under such circumstances, the plaintiffs filed a suit for declaration for injunction.

The defendants filed a joint written statement. In the written statement it is stated that Nirmala Nalini Neogi/Debi alleged to be the aunt of Pradhan Paul and the grandmother of the plaintiff no. 1 who was actually the maternal aunt (masi) of Pradhan Paul who had her separate family having husband, son and never resided jointly with Pradhan Paul. The brother of Pradhan Paul namely Rabindra Nath Paul and sister Sandhya Pal resided with Pradhan Pal in joint mess. The said Pradhan Pal was unmarried till his death. Rabindra Nath Paul brother of Pradhan Paul died leaving his wife, daughter and one son being defendants no. 1 to 6 and Smt. Sandhya Pal being defendant no. 7 who is still unmarried. So, after the death of Pradhan Pal, actual legal heirs were his brother and sister and their descendants and as such the defendants no. 1 to 7 were the heirs of the suit property. Moreover, there was no question or sanctity of Nirmala Nalini Neogi being a legal heir of Pradhan Paul. Plaintiffs had filed the suit with a mischief design, ulterior motive to snatch the property of the defendants without any legal basis. The defendants also categorically denied about any agreement either in written form or oral between Rabindra Nath Pal or the predecessor of the plaintiffs Balai

Chandra Neogi, neither the said Balai Chandra Neogi paid Rs.2000/- as earnest money to Rabindra Nath Pal or any material brother of Rabindra nath Pal namely Panchu Gopal Neogi. The plaintiffs suppressed the facts and out of avarice they had knitted a fine imaginary and fictitious story to gain something without any legal basis. It was further alleged by the defendants that the plaintiffs tried to record their names in the local office of B.L. & L.R.O. but failed to do so.

The Trial Court formulated the following issues:

- “1. Whether the plaintiffs have been enjoying the suit property adversely? And*
- 2. Whether there was a part performance of any contract?”*

During evidence it transpired that the predecessor of the plaintiffs/appellants was in possession of the suit property along with other under mutual understanding even after the death of the predecessor of the defendant nos. 1 to 6 which means that the plaintiffs were under permissive possession. The plaintiffs/appellants during the cross-examination had admitted the aforesaid fact.

If the possession is permissive then the question of adverse possession cannot arise. In order to prove the adverse possession three elements to be proved. The appellants could not prove the said three ingredients namely, nec vi. Nec clam and nec precario .

The plaintiffs also did not aver any specific date on and from which they denied the title of the actual owner. The Trial Court observed that:

“The ld. Trial Court also observed that after assessing the evidence of plaintiffs, nothing was found by the ld. Trial Court to prove that the plaintiffs had denied the title of the actual

owners and that their adverse possession started from any point of time before 26 years. The plaintiffs' predecessor Balai Chandra Neogi for the sake of convenience and better enjoyment merged the suit 'Doba' in plot no.824 with other 'Doba' situate at plot no.823 which is shown in the commissioner's report and annexed map marked as exbt.12 where Balai Chandra Neogi has been doing pisciculture year after year by giving license to one Balai Lal Chatterjee. However, the plaintiffs did not state that the matter of such denial of possession by way of merging the 'Doba' was within the knowledge of the actual owners being the defendants. Neither did the plaintiffs prove before the ld. Trial Court, how the defendants were communicated of such merging of the 'Doba' in plot no.824 and 823.

Ld. Trial Court next observed, the plaintiffs have to prove that they have remained in uninterrupted possession of the property to the knowledge of the true owners and have denied the title of the true owners asserting their own rights of ownership in the property to the exclusion of the true owners. In the present suit ld. Trial Court found nothing that constitutes uninterrupted adverse possession by the plaintiffs of the suit property. Besides the fact that the plaintiffs entered their possession by way of mutual understanding with the predecessor of the defendants, better to say, with the permission of the predecessors of the defendants but when they denied the title as the matter to be proved by the plaintiffs which they failed to prove before the ld. Trial Court."

On the issue of Section 53 A of the Transfer of Property Act, the learned Trial Court did not find any evidence which could prove that between the plaintiffs and the predecessor of defendants nos. 1 to 6 or defendant no. 7 had entered into any agreement for sale and in part performance of such alleged agreement.

The plaintiffs could not establish payment of Rs.22,000/- as earnest money by documentary or oral evidence. The first appellate court on re-

appreciation of evidence has concurred with the said findings.

The concurrent findings of fact based on cogent evidence are not to be lightly interfered with in the second appeal.

The findings of fact arrived at by both the courts on the basis of cogent evidence and appreciation of oral and documentary evidence does not appear to be perverse.

Hence, the second appeal is dismissed at the admission stage.

(Uday Kumar, J.)

(Soumen Sen, J.)