

Item-28. 18-05-2023

sg Ct. 8

SAT 316 of 2016

Subhas Chandra Das Adhikari & Ors.
Versus
Bhusan Chandra Das & Anr.

The appellants are not represented nor any accommodation is prayed for on behalf of the appellants.

The matter is appearing in the daily cause list since 14th February, 2023. In spite of having due notice and knowledge that the matter is pending, the appellants are not represented.

The appeal is defective since 1st August, 2016.

The appellate judgement and decree dated 1st April, 2016 affirming the judgment and decree of the trial court dated 4th December, 2009 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal.

The suit was decreed in faovur of the plaintiffs upon establishing their right in respect of the suit property which would be evidence from the Sale Deed (exhibit 2) along with the oral and documentary evidence. The case is also otherwise proved by the deed of gift (exhibit 1) and the orders passed in J. Misc. Case No. 70 of 1992 pursuant whereof, the writ of delivery of possession under Order 21 Rule 35 of the Code of Civil Procedure was issued on execution with no objection from the respondents/appellants. The Appellate Court on re-appreciation of the evidence both oral and documentary, observed that tabulation is admitted namely:

- a) That the total area of the suit plot no. 207 measures 75 decimals of land as mentioned in Kha schedule of the plaint;

- b) That the Kha schedule property belonged to Mathan Chandra Upadhyay;
- c) That 22 decimals of land out of Kha schedule property was acquired by the State;
- d) That Mathan Chandra Upadhyay transferred the remaining 53 decimals of land as mentioned in the Ka schedule of the plaint to his wife Gouribala Upadhyay by executing deed of gift being no. 6493 of 1978 which also gets corroboration from Exbt.-1;
- e) That Gouribala Upadhyay alienated 24 decimals of land out of the Ka scheudle property to the plaintiffs/respondents by exeucting deed of sale being no.-2117 of 1983 i.e. Exbt. -2; and
- f) That Gouribala Upadhyay also transferred her remaining share i.e. 29 decimals of land in the Ka schedule property to the defendant nos. 1 to 4/appelalnts by dint of deed of sale being no. 903 of 1990 i.e. Exbt. B.

It appears from the judgment of the First Appellate Court that these facts are admitted. The First Appellate Court has taken into consideration the Exhibits 5, 5A and C from which it would be clear that the plaintiffs filed an application under Section 8 of the West Bengal Land Reforms Act against the defendant nos. 1 to 4 before the learned Civil Judge (Junior Division), 2nd Court, Contai praying for transfer of the respective share which Gouribala Upadhyay transferred to the defendant nos. 1 to 4 by virtue of Exhibit B, to the plaintiffs in Misc. Judicial Case No. 70 of 1992. The said application under 8 of the said Act was allowed by the learned Civil Judge (Junior Division), 2nd Court at Contai and consequently, the transfer in favour of the defendant nos. 1 to 4 was reversed. The relevant observations of the learned First

Appellate Court, in this regard, are reproduced as follows:

“Referring to the schedule of the application under section 8 the appellants have pointed out that in the schedule 0.29 decimals of land; not 29 decimals of land has been mentioned and so by that order the plaintiffs acquired title over 0.29 decimals of land; not over 29 decimals of land. It is settled principles of law the pleading has to be considered entirely; not in piece-meal. From the application under section 8 it is crystal clear that the plaintiffs filed that application for transfer of the respective share, which Gouribala Upadhyay transferred to the defendant nos. 1 to 4 by virtue of Exhibit B. From Exhibit B it is glittered that through that deed Gouribala Upadhyay transferred 29 decimals of land; not 0.29 decimals of land to the defendant nos. 1 to 4. In his judgement also in Misc. Judl. Case No. 70 of 1992 the Ld. Civil Judge (Junior Division) 2nd Court, Contai has categorically stated that “The impugned deed was registered on 24.2.90 by which Gouri transferred a portion or share of the holding to the O.P. Ext. 1(a). The land measured 29 decimals of land.” Moreover, it is not the case of the defendant nos. 1 to 4 that they purchased 0.29 decimals of land; not 29 decimals of land. So, from all aspects the fact remains that by virtue of Misc. Judl. Case No. 70 of 1992 the plaintiffs acquired right, title, interest and possession of 29 decimals of land in plot no. 207 which was transferred to the defendant nos. 1 to 4 by Gouribala Upadhyay through Exbt.-B.

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In terms of above analysis it is epilogued that the plaintiffs acquired right, title and interest in the entire Ka schedule property by virtue of deed of sale being no.-2177 of 1983 and on the strength of preemption case vide Misc. Judl. Case No. -70 of 1992.”.

In view thereof, we do not find any reason to interfere with

the concurrent findings of both the courts.

The second appeal stands, accordingly, dismissed. There shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)