

20.06.2023

SAT 225 of 2013

Court : 04
Item : 03
Matter : SAT
Status : **DISMISSED**
Bench ID : **266048**
Transcriber: **NANDY**

Rupak Chowdhury & Anr.

Vs.

Kalyani Kundu & Ors.

Mr. Apurba Krishna Das, Advocate

Mr. Arup Krishna Das, Advocate

.....for the Appellants

The suit for recovery of possession and permanent injunction filed by the plaintiffs/respondents was decreed by the Trial Court and such decree was affirmed by the First Appellate Court. Both the Courts concurrently held that the plaintiffs/respondents have a right, title and interest in respect of the suit properties and the defendants/appellants have illegally and forcibly encroached upon a portion thereof without any right, title and interest therein.

The plaintiffs/respondents claimed the right, title and interest in respect of the property through Haripada Kundu who in turn purchased the said property by virtue of a sale deed dated 17.12.1964 from Santosh Das. The predecessor-in-interest of Santosh Das namely Banamali Kha sold the said property to the vendor of Haripada and delivered the possession in his favour. The said Banamali Kha acquired the property by virtue of a sale deed executed by Gitarani. Gitarani became the owner of the property on the basis of a deed of gift executed by Khagendranath Biswas. The plaintiffs/respondents assert that upon the death of Haripada Kundu, his wife and the four daughters inherited the property by way of intestate succession. But one of the daughters namely Amita sold her portion to one Sushma Kundu. The plaintiffs assert that there is a demarcating wall between the plaintiffs/respondents and the defendants/appellants. The allegations runs to the extent that on 28.08.2006 the

defendants/appellants have tried to encroach upon the suit property and ultimately succeeded in occupying four decimal of lands on 11.09.2006 despite several attempts to thwart such illegal acts at the behest of the plaintiffs/respondents.

It is a specific case of the defendants/appellants that the larger property comprised of 96 decimals of land originally belonged to Atal Bihari Biswas who died leaving behind him surviving three sons Promothho Biswas, Khandranath Biswas and Achintya Kumar Biswas. Promothho was a bachelor and upon his death, his shares devolved upon his two surviving brothers in equal shares. Then defendants/appellants traced their title through Achintya Kumar Biswas and asserted that they are in peaceful possession in respect of the portion sold by said Achintya.

A common thread can be seen from the stand of both the parties that Khangendranath had a right, title and interest in respect of the property and it is categorically stated by the plaintiffs/respondents that both the brothers amicably demarcated the entire land comprised of 96 decimal and thereafter were occupying and/or possessing their respective portions to the exclusion of others. By passage of time several transactions have been made in respect of the subject property which has been succinctly narrated in the findings returned by both the Courts below to which we do not find any ambiguity and/or quarrel in this regard. Both the parties have traced their title through the aforesaid two brothers and alleged that they are occupying and possessing the respective portions conveyed to them. The Trial Court as well as the First Appellate Court held that since the property is well

demarcated which would be seen from several deeds executed in relation thereto, the defendants have no right, title and interest in respect of the scheduled property and have illegally and forcibly encroached thereupon.

It appears from the record that an application under Order 41 Rule 27 of the Code of Civil Procedure was taken out by the defendants/appellants for adducing additional evidence to the extent that the deed of gift which was tendered in evidence before the Trial Court but was not marked exhibit as it was not properly proved, should be permitted to be tendered again by proving the same in accordance with law. The deed of title sought to be relied upon is executed by the father in favour of the sons much after the property comprising of 96 decimal of land having demarcated amicably by the aforesaid two brothers namely Khagendranath and Achintya. The said deed of gift has no relevance over the property exclusively enjoyed by Khagendranath during his lifetime and is relatable to a property possessed and occupied by Achintya after amicable partition. The Court may permit a party to adduce additional evidence provided the ingredients under Order 41 Rule 27 are fulfilled. The Court shall not permit a party to adduce evidence which has no relevance and/or nexus to the core issue involved in the suit nor will have any bearing thereupon. If the documents have no relevance to the main issue and does not require for the purpose of delivering the complete and effective judgment by the Court, there is no impediment on the part of the Court to reject the application filed under Order 41 Rule 27 of the Code of Civil Procedure.

A plea is sought to be taken that the larger property comprising of 96 decimals of land is an un-demarcated

one and the suit would be bad for defect of parties as the co-sharers have not been impleaded. Such question was taken before both the Courts of appeal below and has been negatived for the simple reason that both Khagendranath and Achintya during their lifetime amicably demarcated their shares and enjoyed to the exclusion of the others. The moment by virtue of an amicable partition, the co-sharers have demarcated their shares and enjoyed exclusively the allotted portion; it would bring the severance of the shares and, therefore, cannot be regarded as a joint property.

From whatever angle we look at, does not find any fault in the judgment of both the Courts below. We also do not find any substantial questions of law involved in the instant appeal.

The appeal being **SAT 225 of 2013** thus **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)