

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**SAT 121 of 2023
With
CAN 1 OF 2023**

**Tapas Kumar Maity
- versus -**

Pradip Kumar Chatterjee & Anr.

**For the appellant : Mr. Chayan Gupta
Mr. Rahul Das
Mr. Asutosh Sing
Mr. Rahul Sharma**

Judgment on : 18.10.2023

Prasenjit Biswas, J:-

- 1.** Both the Courts have decided the case against the appellant.
- 2.** The only question involved in this case is that whether the respondent/plaintiff has ownership over the Schedule B Property as mentioned in the plaint.
- 3.** Three properties have been mentioned in the schedule of the plaint as A, B and C. A Schedule denotes the entire property whereas Schedule B and C are located inside the A schedule and integral part

of the same. In the extreme end of the property mentioned in the A schedule, there is a two-storied building which has been mentioned in the schedule B of the plaint. The plaintiff/respondent claims to be the owner of the said B schedule property. It is the case of the plaintiff/respondent that the vacant land of the A scheduled property has been transferred to the present appellant/defendant by dint of two registered deeds of sale being No(s) 875 and 876 of the year 2008 but he never transferred the building mentioned in the B schedule in any way to the appellant/defendant. It is the specific case of the plaintiff/respondent that only the land as described in the C schedule property has been sold by virtue of the aforementioned two registered deeds of sale and the sketch of maps appended with those two deeds would reveal the portion sold to this appellant and remaining portion of the plot of land has been remained with the plaintiff/respondent.

4. The defendant entered appearance in the suit and filed written statement disputing the claim of the plaintiff. The appellant/defendant took a stand that the plaintiff/respondent sold land along with building standing thereon by two registered deeds of sale and the said quantum of land was surrounded by a boundary wall. It is further contended by this appellant that the respondent delivered possession to him in respect of entire land along with residential house standing thereon as mentioned in the Schedule B of the plaint. It is the claim of the defendant/appellant that he

became absolute owner in respect of plot of land and residential house standing on it and is possessing the same.

5. Two deeds are marked as Exhibits 1 and 2 in the case and sketch maps are appended with those two deeds and from those maps it appears that the house of the plaintiff/respondent has been described to be situated in the Western part of the property so sold. It appears from the aforesaid two registered deeds of sale that the vacant land from the A schedule property has been transferred in favour of this appellant as described in the schedule C of the plaint. From the Schedule of the deed being No. 886 it appears that the house of the plaintiff/respondent is situated in the Western side of the schedule land purchased by the present appellant. Those two deeds of sale throw light about the existence of the house of the plaintiff/respondent in the South-Western side of the sold land to the appellant. Moreover, there is nothing in the two deeds which would reflect that the plaintiff/respondent sold any structure situated on the plot of land in favour of the defendant/appellant and B schedule property has not been included in the land so sold to the appellant by the respondent.

6. It further appears from the deposition of the appellant that he admitted that the land purchased by him was lying vacant covered by a boundary wall. So, there is no doubt in our mind that the appellant/defendant purchased only land as described in the C

schedule of the plaint and the house standing of the plot of land is remained with the respondent/plaintiff.

7. We are not unmindful about the proposition of law that where the boundaries are vague and indefinite, the area should prevail but where the boundaries are specified and definite, the land that is conveyed must be the land within those specified boundaries and the area must be taken as having been given approximately.

8. So, the principle is that the boundaries mentioned in the deed shall prevail when there is a dispute between the area of the transfer of land indicated in the deeds and the boundaries mentioned in the deeds would clearly apply in the facts of this case.

9. So, we are unable to comprehend the contentions of the defendant that the entire landed property along with the structure has been purchased by him for which he has every right to make construction upon it. We have already stated that from the maps appended with the deeds of sale it would appear that in the extreme end of the A schedule property there is a building and we have no hesitation in our mind that the plaintiff transferred the vacant land as depicted in the maps in favour of this appellant by registered deeds of sale.

10. So, we have no hesitation in our mind that both the Courts below have correctly found that the present appellant/defendant had purchased only the vacant land as mentioned in the C schedule in

the plaint excluding the building/ structure as mentioned in the B schedule of the plaint.

11. In view of the above, we find there is no illegality or irregularity in the impugned judgment and decree passed by both the Courts below and no substantial question of law is involved in this case.

12. Accordingly, the instant appeal be and the same is hereby dismissed.

13. However, there will be no order as to costs.

14. Connected application if any is hereby dismissed as disposed of.

15. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)