

Item-52.	19-01-2023	SAT 348 of 2016 CAN 1 of 2016 (old CAN 8735 of 2016)
sg	Ct. 8	Palash Banerjee Versus Debasish Pal & Ors.

The matter initially appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The appeal is defective in view of the report of the Stamp Reporter dated 17th August, 2016. Earlier on 9th January, 2017, a coordinate Bench directed the matter to go out of list to cure the defects by the appellant. However, no attempt has been made since then till date to remove the defects.

We could have dismissed the appeal for non-removal of the defects. However, we propose to have a look at the judgments of both the courts in order to find out whether the second appeal involves any substantial question of law.

We have also read the memorandum of appeal.

The judgment and decree of the first appellate court dated 14th March, 2016 affirming the judgment and decree passed by the trial court on 14th May, 2015 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal. The plaintiff/appellant filed a suit before the trial court for declaration that the deeds described in schedule A of the plaint are invalid, baseless, void and not binding upon the

plaintiff/deity or any of the sebaits.

Briefly stated: the fact of the case in short is that the property described in schedule B, is Debottar property and the property is managed by Sebait on behalf of deity Sri Sri Durga Mata Thakurani. The proforma defendants – Sri Susanta Bandopadhyay and others, knowingly or unknowingly transferred part of the Debottar property through their constituted attorney – Debashish Pal. It is further contended that the properties other than Debottar property, were partitioned amicably on 16.04.1970. The defendant No.1 exceeding his limit as power of attorney holder, transferred Debottar property by executing deeds described in schedule A of the plaint, the deeds are void inoperative and did not convey any right, title interest and possession to the transferees. By filing this suit the plaintiff prayed for declaration as to the right, title, interest and possession of the plaintiff/deity in respect of B schedule properties and for further declaration that defendants other than defendant No.1, do not have any right, title, interest in respect of the property of the deity and defendant No.1 had no right to transfer, as such the deeds described in schedule A to the plaint are invalid, baseless, void and not binding upon the plaintiff/deity or their sebaits and for permanent injunction.

The defendant No.1, alone contested the suit by filing written statement denying and disputing each and every material allegations of the plaint. According to the said defendant the father of the plaintiff/Sebait namely, Parvati Sankar Bandopadhyay transferred 10 decimals of land each out of suit plot No.1243 to one Lambodar Mondal and Rakhahari Mondal, on 21.05.1956. Similarly, Durga Sankar and Tara Sankar

Bandopadhyay transferred their shares in respect of suit plot of third parties who are possessing the properties, even plaintiff – Palash bandopadhyay, transferred some properties to proforma defendant Nos. 44 and 45 as attorney of other co-sharers. The defendant prayed for dismissal of the suit.

The plaintiff has principally claimed for affirmation of title over B schedule property by way of a declaration that the sale deeds concerning A schedule property is void and illegal. The other issue was whether the plaintiff ought to have prayed for recovery of possession. The plaintiff has alleged that the sale deeds executed in the year 2000 and 2001 are void and the plaintiff is in constructive possession.

The learned trial judge has rightly held that even if the sale deeds are declared to be void and any other person apart from the sebaits are found to be in possession of the suit plot, there would be a requirement to pray for recovery of possession against the illegal possessor. In the trial, the plaintiff could not establish any title over the suit plot no. 1243. The total area of the suit plot 1243 is 14.44 acres as it appears from CSROR (exhibit-6). It admits of only 1.88 acres of land. However, in the LRROR (exhibit-2), the total area of the suit plot is 9.04 acres, which is recorded as debutoor property. The plaintiff could not offer any explanation of ownership in respect of the rest portion of the property out of the suit plot no. 1243. The transferee has, however, produced documents to show that they are the rightful owners of the said plots. The B schedule properties are accordingly held to be in the possession of the transferees and the plaintiff/deity was found to be out of possession. The sebaits did not claim to be any

possession of the rest portion of the property. In any event, having regard to the fact that the deity could not produce any registered deed showing ownership of 14.44 acres, save and except 9.04 acres, the suit cannot be decreed in favour of the plaintiff/deity for the balance portion.

The learned trial judge held that A schedule sale deeds are void, illegal and inoperative. This is the affirmation of the first appellate court and there is no cross appeal. However, on perusal of the CSROR (exhibit 6) and LRROR (exhibit 2), it appears that the suit property stands in the name of Tarama and not in the name of Durgamata Thakurani. The plaintiff has failed to establish that Tarama and Durgamata Thakurani are one and the same person. In deciding whether the suit is bad for non-misjoinder or non-joinder of parties, the first appellate court held as follows:

This suit was sent back to the trial court on remand by the learned appellate court vide an order passed Title Appeal no.43 of 2007 in which learned appellate court was pleased to hold that Himadrishankar, Dibyashankar, Kishorshankar, Amalshankar, Jayanti, Ashok Bandopadhyay, Goutam bandopadhyay, Kumkum, Basudeb, Kumardeb, Krishna, Bimala Debi and Deepali Bandopadhyay are the necessary parties of this suit as they appears to be co-sebayits of the suit properties as per the deposition of PW2. In this issue learned Appellate Court had upheld the view taken by the first trial court and sent back to suit for remand. From the order passed by the learned appellant court it appears that plaintiff sebayit preferred one petition u/o 6 rule 17 CPC to implead those persons into this suit. Learned trial court provided an opportunity to the plaintiff to implead those persons

into this suit. Learned trial court provided an opportunity to the plaintiff to implead those persons into this suit and sent the same to the trial court on remand. But the plaintiff representative has not taken any step to implead those persons into this suit. It reflects from the record that one petition was filed by the plaintiff which was taken for hearing by this court on 06.05.2014 in which plaintiff submitted that there is no necessity to amend the plaint by impleading necessary parties into this suit. This shows the intention of plaintiff to proceed with the suit without impleading the necessary parties. The trial court after getting back the suit on remand provided opportunity to the plaintiff to implead all the necessary parties into this suit. But such opportunity was not availed of by the plaintiff. Hence, the defect of parties of this suit remained as it is. Though one of several sebayits may bring a suit for the protection of the interest of the deity, but the other sebayits should be impleaded as proforma defendants. Without the other sebayits the suit suffers from defect of parties.

Being aggrieved by the said decision of the trial court, an appeal was preferred by the plaintiff. The first appellate court in concurring of the findings has taken into consideration that the PWs 1 and 2 had admitted that the defendants have constructed houses in the propitious and the suit property is not in exclusive possession of the deity or sebaity of the deity. The first appellate court has also taken into consideration that on remand by the first appellate court in TA 43 of 2007, the first appellate court directed impleading certain parties, which however, was carried out with the plea that the first appellate court is illegal. The plaintiff did not challenge the order passed by the first appellate court directing

impleading other parties who are found to be necessary parties in the suit. In this regard, the first appellate court has rightly relied upon the decision of the Hon'ble Supreme Court in ***Prakash Narain Sharma v. Burmah Shell Cooperative Housing Society Ltd.***, reported in **(2002) 7 SCC 46** in which it is clearly stated:

“7..... A judicial order, not invalid on its face, must be given effect entailing all consequences, till it is declared void in a duly constituted judicial proceedings.”

On consideration of the aforesaid materials and the findings arrived at by the trial court as well as by the first appellate court on the aforesaid issues which do not appear to be perverse, the second appeal stands dismissed at the admission state.

However, there shall be no order as to costs.

In view of the dismissal of the second appeal, the connected applications also stand dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)