

Item-55.	19-01-2023	SAT 415 of 2016 CAN 1 of 2016 (old CAN 10178 of 2016)
sg	Ct. 8	Sudhanshu Bhandary & Ors. Versus Mihir Ranjan Bhandary & 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 matter appeared on 20th December, 2016 and 30th October, 2017. The appellants were directed to remove the defects as per as its possibility. On 30th October, 2017, the appellants were represented. In spite of having due notice and knowledge that the matter is pending, the appellants are not represented.

The appellate judgment and decree dated 30th June, 2016 affirming the judgment and decree of the trail court dated 31st July, 2014 in a suit for declaration of title and recovery of khas possession is the subject matter of challenge in this second appeal.

The plaintiff filed the suit claiming ownership over 2 decimals of bastu land in CS plot No. 463/622 being RS plot no. 622 recorded under CS Khatian no. 246, RS Khatian no. 350 previously belong to one Balaram Bhandari. It is stated that Balaram by way of such settlement recorded his name in the CS khatian. Subsequently, Balaran settled the suit land in favour of three brothers, namely, Arabinda, Jagadish and Yogendra alias Togeshchandra Bhandari by taking a selami of Rs.25/- with

condition of receiving the rent and Yogesh Chandra executed Kabulati in favour of Balaram to ensure the payment of rent on 14th Bhadra 1349 B.S. and after taking settlement of the suit land Arabinda, Jagdish and Yogendra Bhandari constructed house over the said plot and Arabinda started a dispensary over the said land and the said land was recorded in the name of three brothers in RS khatain no. 350. Subsequently, the suit land was allotted to Arabinda Bhandari by way of partition in between the three aforesaid brothers including the suit and other non suit lands. Previously Yogeshchandra Bhandari continued a business of Soda Water and ice cream but he stopped the same to provide shelter to his brother Arabinda who was a doctor and the house over the suit land was reconstructed with mud wall and tile shed, previously it was constructed with split bamboo wall and straw shed. After that Arabinda gifted the suit property to the plaintiff vide deed of gift dated 26.05.1981. It is stated that the principal defendants filed a suit being TS no. 30 of 1981 in respect to the suit land against Yogesh, Jagdish and Arabinda Bhandari and the same was renumbered as TS No. 95A of 2003 and dismissed and they (defendants of this suit) preferred appeal against the judgment and decree but the appeal was also dismissed. It is mentioned that in spite of the deed of gift, Arabinda Bhandari again started his dispensary by permission of the plaintiff and at that time the plaintiff again reconstructed the house with brick wall and tile shed. After that the principle defendants dispossessed the plaintiff from the suit property on 30.06.1981 and partitioned the suit house into four house and tenanted the said room to proforma defendant no. 13, 14 and 15 and after that the plaintiff again and again requested

the defendants to vacate the suit property but the defendants deferred the matter in various pretext and lastly on 22nd day Shraban, 1394 of B.S they denied to hand over the suit property to the plaintiff and the plaintiff was compelled to file the instant suit on 21.11.1987. The plaintiff claimed for declaration of title, recovery of khas possession, injunction and cost and compensation from the date of 30.06.1981. The defendant nos. 1 ka to 1 chha are contesting the case by filing Written Statement with denial of the plaint case in toto.

The defendants put up a defence by way of an amicable partition. The defendants in their written statement have stated that the suit land was a part of land of plot no. 463 and the plot nos. 462 and 463 were adjacent to each other and the suit land was previously possessed by Bhutnath and Nabin Bhandari. Nabir died leaving behind his tow sons Kalipada and Bijay Bhandari. Bhutnath, Kalipaeda and Bijay Bhandari settled 1 katha 3 chhatak land that is to say 2 decimal land of plot no 463 to Balaram Bhandari and he executed a deed of Kabulati in favour of Bhutnah, Kalipada and Bijay Bhandari and accordingly the said land has been recorded as bata plot no. 463/622 in the name of Balaram Bhandari in C.S. Khatiyani no 246 and Kalipada Bhandari and other's name were recorded as superior land lords. It is stated that by way of amicable partition Kalipada and Bijoy Bhandari were allotted the 2 decimals land of 463/622 plot, and the land of plot number 463. It is mentioned that due to arrear rent, Kalipada Bhandari and others intended to file a eviction suit against the sons of Balaram Bhandari but the sons of Balaram Bhandari requested them to exempt from payment of rent and to take back the suit land in khas possession

and for this reason they did not file any suit and they constructed four shop rooms and now one of the shop room is in possession of Sanjay and Mrituynjay and the other rooms are in possession of the tenants of the principal defendants. It is mentioned that the R.S. record in the name of Arabinda, Yogeshchandra and Jagadish Bhandari is erroneous and that has no basis. It is mentioned by the defendants that the defendants have been in possession by taking electric connection over the suit houses and all the deeds and documents as have been mentioned in the plaint are false, baseless and by those deeds the plaintiff has not acquired title over the suit property.

The plaintiff exhibited 9 documents in proof of title. The defendants have only produced electric bills and some money receipts insufficient their claim. The documents exhibited by the plaintiff unmistakably establish their title to the property. This has been discussed at length by the trial court.

The first appellate court in affirming the said judgment has made the following observations:

“ Now the burning question is that who has title over the suit property either the appellants or the respondent. Here, on perusal of Ext. 1 which is the certified copy of deed of Kabuliat and Ext. 2 which is the certified copy of the deed of partition, it appears that the suit property was settled by Balaram Bhandary in favour of Arabinda, Yogesh and Yogendra Bhandary and thereafter a partition was made among the three brothers and the suit property was fallen in the share of Arabinda Bhandary. Ext. 9 which is the certified copy of deed of gift and from which it appears that Arabinda Bhandary gifted the suit property to Mihir Ranjan

Bhandary, the respondent of this appeal.

on the other hand, no such deed of settlement or any other document of title as contended by the appellants or argued by ld. Advocate for the appellants have been produced before the lower court or before this court to ascertain the title of appellants or Kalipada Bhandary to be relief on. In such circumstance, it cannot be said that the deceased Kalipada Bhandary or the present appellants had/have right, title over the suit property. The exhibit-A and B series which are the electric bills and money receipts show that the appellants are in possession of the suit property but these documents do not confer any title to the appellants or Kalipada Bhandary. In this context, the findings of ld. Lower Court in his judgment is justified and correct.

Further, Exhibit 3 series and Exhibit-4 series which are the certified copies of judgement of T.S. No. 95A of 2003 and certified copy of T.S. No. 55 of 2005 in respect of the suit property goes to show that show that the appellants and their predecessor in interest filed those suits/appeal and both the suits and appeals have been dismissed.

As regard cost imposed by ld. Trial Court upon the appellants/defendants I think that it should be viewed liberally and it should be modified. Apart from this, I do not find any scope to poke my nose in the findings of ld. Trial Court observed in his impugned judgement.”

The judgment of the first appellate court upon consideration of the oral and documentary evidence and on appreciation of such evidence, the above observation was made by the first appellate court. It is elementary that a witness made lie but the document

would never lie. The documents exhibited by the appellants clearly establish their title to the property.

In view thereof, the appeal fails. However, there shall be no order as to costs.

In view of the dismissal of the appeal, the connection application shall stand dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)