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Ct. No. 04

akd

S.A.T. 238 of 2022

Malina Hati & Ors.

Vs.

Sri Sourendra Nath Chakraborty & Ors.

Mr. Md. Mahmud.

... for the appellants.

Both the Courts below proceeded to dismiss the suit, as the plaintiffs/appellants failed to prove the title in respect of the property described in Schedule 'B' to the plaint nor could prove that the deed of sale executed in the year 1995 is bad and was never acted upon.

The facts, as unfurled, involved in the suit relate to a property described in Schedule 'B' to the plaint which was originally owned by one Hari Charan Hati. After his death the property was succeeded by his wife, namely Yashoda Hati, three sons, namely Kanailal Hati, Santosh Hati and Monilal Hati. However, the plaintiffs/appellants in the plaint did not disclose that the property was originally owned by Hari Charan Hati, but admitted that the property was owned and possessed by the aforesaid three sons, the names whereof have been disclosed hereinabove. So it can be safely said that both the parties traced the title through common predecessor.

According to the plaint case, after the death of one of the sons, his right, title and interest passed upon the other two sons and the plaintiffs as well as the proforma defendants being the descendents have inherited the said property under the Law of Succession.

On the other hand, the defendants took a plea that during the lifetime of Yashoda Hati, the mother, one of the sons died issue-less and his share devolved upon the mother being the surviving heir included in

Class-I appended on the basis of Section 8 of the Hindu Succession Act. It appears that the aforesaid surviving heir of Hari Charan Hati executed and registered a deed of sale in the office of Joint Sub-Registrar at Behala and recorded in Book No. 1, Volume No. 28, pages 46 to 50 being deed no. 1357 for the year 1979 in favour of one Durga Bala Pakhre in relation to a property described in Schedule 'B' to the plaint, which is part and parcel of Schedule 'A' property. Subsequently the said Durga Bala Pakhre sold, transferred and conveyed the Schedule 'B' property to the defendant nos. 1 and 2 by executing and registering a sale deed in the year 1995.

Curiously enough the deed allegedly executed by the successors of said Hari Charan Hati in favour of Durga Bala Pakhre has not been challenged by the plaintiffs/appellants, rather the challenge is thrown to the deed executed by the said predecessor in favour of the defendant nos. 1 and 2 in the year 1995. The right, title and interest was divested by the original owner way back in the year 1979 and after such divestment the said property does not form part of the estate left in case of intestacy and, therefore, the plaintiffs/appellants cannot trace title on the strength of Law of Succession. The purchaser acquired an indefeasible right or in other words absolute right in respect of the property and further alienation is on the strength of such title having vested in her by the deed of sale executed in the year 1979.

Though several issues have been raised in the suit as well before the 1st Appellate Court, but taking into account the aforesaid fact that the sale deed of 1979 remained unchallenged, the deed of 1995 cannot be impinged or declared invalid so-long the said sale deed of 1979 remains valid, operative and binding on the parties.

So far as the plea that the deed was not acted upon, both the Courts below have found that the plaintiffs have failed to prove the same; rather it appears that the said defendant nos. 1 and 2 duly mutated their names in the Assessment Role maintained by the Kolkata Municipal Corporation and discharging their obligation as a person primarily liable for payment of taxes and, therefore, it cannot be said that the defendant nos. 1 and 2 never acted upon the sale deed executed in their favour in respect of Schedule 'B' property.

We, thus, do not find an involvement of substantial question of law in the instant appeal.

The appeal is thus dismissed.

There will be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)