

**Sri Sri Guru Gouranga Gandharbika Giridhari Jew
Vs.
Panchu Sheikh & Anr.**

Mr. Chanchal Kumar Dutta
... For the Appellant

The appellate decree dated 18th August, 2006 affirming the judgment and decree passed by the trial court on 28th March, 2001 in a suit for declaration and for injunction is the subject matter of challenge in this second appeal.

The suit filed by the plaintiff was dismissed. The first appellate court affirmed the judgment of the trial court.

We have carefully perused the judgment of the first appellate court as well as the trial court and the grounds of appeal.

The principal question is whether the plaintiff-deity has any right over the suit property. It appears from the record that one Shyamal Krishna Brambhachari, one of the Sebayets of plaintiff-deity, was examined as P.W 3. Two other witnesses, namely, Baidyanath Mukherjee and Najir Sheikh, P.W 1 and P.W 2, were also examined to prove the title of the plaintiff-deity over the suit property. The plaintiff also relied upon R.S record of rights (Ext.1) and K.B Khaitan (Ext. 2) to establish his title. The defendants produced witnesses and relied upon attested copy of L.R record of rights (Ext.A), dakhilas (Exts. B, B/1 and B/2), L.R record of rights(Ext.C), copy of order of A.D.M (LR), (Ext-E) and C.S. record of rights (Ext-F).

Baidyanath Mukherjee, P.W 1, is a State Government employee. On 8.12.1999 he was attached to the office of B.L&L.R.O, Nabadwip. He was summoned to produce Exhibit-1 and Exhibit-2 in respect of Plot no. 330, Mouza-Ballaldighi. In his evidence he has stated that the name of the plaintiff-deity was duly published in respect of Plot no. 330 pertaining to Khatian no. 1262 of the said mouza. It was his further evidence that the name of the plaintiff-deity was published at the stage of K.B settlement in respect of the property in question. However, in his cross-examination he admits that name of the defendant Panchu Sheikh was published as raiyat in LRROR in respect of Plot no. 330 appertaining to L.R Khaitan no. 729/1.

P.W 2, Najir Sheikh, deposed that plaintiff-deity is the actual owner of the property in question. The father of the defendant no. 1 used to cultivate that land as Bargadar. Defendant no. 2 Panchu Sheikh also used to cultivate it as Bargadar, but he surrendered his Bargadarship. However, during his cross-examination he could not produce any document relating to the property in question at any point of time.

Shyamal Krishna Brambhachari, P.W 3, one of the Sebayats of plaintiff-deity, deposed that the defendant no. 1 is the Bargadar in respect of the property in question under the plaintiff-deity and taking advantage of such position he made an attempt to dispose of the property in question some time in the year 1992 without any authority.

The defendant no. 1 deposed that the property in question was recorded in the name of Keshmat Mondal in C.S Khatian and he was his

maternal uncle. After the death of Kesmat Mondal he became the owner of the said property and recorded his name in the finally published L.R Khatian in respect of the property in question.

It was the positive case of Panchu Sheikh that the plaintiff-deity has no right, title and interest over the suit property and he was not at all a Bargadar in respect of the property in question. The trial court as well as the first appellate court noticed that R.S Khatian in respect of the suit property in question stands in the name of the plaintiff-deity. But in finally published L.R Khatian, the name of the defendant no. 1 Panchu Sheikh was recorded as raiyat. It is true that the record of rights does not create any title but it carries presumption of possession to the person to which it relates. The trial court as well as the first appellate court has relied upon ***Mahabir Pandey and Ors. Vs. Sashibhushan Dube, reported in 1985 C.W.N 357*** for the proposition that if there is a conflict between entry of two Khatians the later one is presumed to be correct.

Both the courts have relied upon Exhibit-E and the order of B.L & L.R.O, Nabadwip pursuant to which L.R record of rights(Ext.C) was finally published in the name of Panchu Sheikh as raiyat. It further appears from Exhibit-B series that the defendant no. 1 Panchu Sheikh paid rent to State.

In view of Exhibits B, C and E there are clear presumption of possession in favour of Panchu Sheikh. Moreover, the suit is filed by the plaintiff-deity for declaration of title and onus lies upon the plaintiff-deity to prove its case by

sufficient evidence. Moreover, the defendant on the strength of his possession can resist interference from the plaintiff, who has no better title than himself. It is equally settled that in the absence of proof of better title possession or prior peaceful settled possession is itself an evidence of title. Law presumes the possession to go with the title unless rebutted [***Subramaniaswamy Temple, Ratnagiri v. V. Kanna Gounder (Dead) by Lrs.*** reported in **2009(3) SCC 306**]. The trial court relied upon the decision of the Calcutta High Court in ***Roy and Co. & Ors., v. Nani Bala Dey & Ors.***, reported at **AIR 1979 Cal 50** for the proposition that in a suit for title the plaintiff can only succeed on the strength of his own case and not on the basis of any weakness of the defence. This observation was made in view of the submission made on behalf of the appellant that although in the written statement it was alleged that Kesmot Mondal and others were the owners of the suit property, the defendants did not produce any document to show that his father became the owner of the property in question by virtue of a registered instrument, as pleaded in his written statement. However, as rightly observed by the trial court as well as the first appellate court that in a declaratory suit for title it is for the plaintiff to prove and establish his title on the strength of his own case and not on the defendant's weakness, as held in ***Roy and Co. & Ors.*** (*supra*) in paragraph 9.

Under such circumstances, the appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of

Civil Procedure at the admission stage.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)