

Item-14. 10-01-2023

SAT 521 of 2012

sg Ct. 8

Raj Kumar Sharma & Ors.
Versus
Kartick Chandra Mondal & Ors.

Md. Harun-All-Rashid, Adv.
...for the appellants

The learned Counsel for the appellants submits that in spite of beset efforts, he could not establish any contact with the appellants. It appears that the defects notified by the Additional Stamp Reporter in its report dated 19th October, 2012 have been removed. In fact, an order dated 28-09-2016 shows that the appeal was listed at the instance of Mr. Prasenjit Mukherjee, learned Counsel for the respondents. Today, an adjournment is prayed for on behalf of the appellants.

We are not inclined to adjourn this matter.

The second appeal is arising out of a decree dated 24th July, 2012 passed by the learned Additional District and Sessions Judge, 2nd Fast Track Court, Rampurhat affirming the decree dated 29th January, 2010 and 15th March, 2011 in a suit for declaration with consequential reliefs.

The plaintiffs have claimed right, title and interest in respect of the property in question on the basis of the deed of gift and established its relationship with the donor. The trial court on the basis of the oral and documentary evidence has concluded that the suit property originally belonged to Jagganath Mondal. Jagganath Mondal was the son of Sitanath Mondal. Jagganath had another

brother namely, Gangadhar Mondal. Susharibala was the wife of Gangadhar Mondal, who was claimed as predecessor in interest of the defendants of the suit property. The trial court further observed that the plaintiff nos. 1 to 4 were the successors of Jagannath Mondal in his detailed judgment while deciding the issue nos. 7 and 8 and finally decreed the suit in favour of the plaintiffs with an observation that at that relevant point of time, i.e. in the year 1979, Sushari Mondal had no right over the suit property and accordingly, she also could not have any right to transfer the property in her capacity as owner and accordingly, the transfer on the basis of which the defendants were claiming their right, title and interest does not survive. The defendants were restrained permanently from dispossessing the plaintiffs from the suit property and the LRROR standing in the name of the defendants were binding upon the plaintiffs.

This order of the trial court was challenged before the first appellate court. The trial court in deciding the issue in favour of the plaintiffs has taken into consideration the evidence of the parties which had means and/or knowledge with regard to the relationship between Jagganath Mondal and Sushari and also the deed of gift duly proved in accordance with law. The first appellate court also considered the same set of evidence and arrived at a same conclusion. The first appellate court in coming to the said conclusion has taken into consideration the fact that the plaintiffs claimed to be the legal heirs of Jagganath Mondal and accordingly, it was contended that Sushari Mondal had no right, title and interest over the suit property at any point of time and

accordingly, the transfer is not at all binding upon the plaintiffs. The contention of the appellants before the appellate court was that the plaintiffs have failed to prove that they are the legal heirs of Jagganath Mondal and Sushari Mondal had no relation with Jagganath. The appellants contended that they acquired right from a person who acquired the right of an order of the Court.

The plaintiffs claimed themselves as legal heirs of Jagganath and to establish their prima facie right, they have relied upon the original deed of gift dated 29-09-1954 and sale deed dated 25-03-1958. Ration card in the name of Kartick Chandra Mondal – exhibit-6, certified copy of gift deed dated 11-01-1957 – exhibit-7 and the certified copy of the deed executed by Susharibala Dasi in favour of Parvati Dasi – exhibit 8. These documents unmistakably show that Jagganath Mondal and Gangadhar Mondal were the two sons of Sitanath Mondal. Susharibala Bala Dasi was the wife of Gangadhar Mondal, whereas the wife of Jagganath Mondal was Dhanubala Mondal. Kartick Mondal and other plaintiffs were the sons and daughters of Jagganath and Dhanubala as it appears from the judgments of trial court as well as first appellate court. The defendants failed to produced any evidence or alternative facts emanating from the aforesaid documents.

Accordingly, if Susharibala Mondal had no right to claim, the property of the deceased Jagganath to the effect made by her would be automatically null and void. These findings of facts based on cogent and credible evidence are not to be rightly interfered with in the second appeal.

The second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

The learned counsel for the appellants has submitted that the parties might have compromised the matter in the meantime. In the event any such compromise has been arrived at, the appellants may apply before the court for modification of this order.

(Uday Kumar, J.)

(Soumen Sen, J.)