

19.05.2023
SL No.21
Court No.8
(gc)

SAT 526 of 2016

**Sukumar Acharya & Ors.
Vs.
Gobinda Mondal & Ors.**

The appellants are not represented, nor any accommodation is prayed for on behalf of the appellants. The appeal is of the year 2016. The matter is appearing in the list from 14th February, 2023. The appellants have due notice about the listing of the matter.

The appellate judgment and decree dated 19th September, 2016 affirming the judgment and decree dated 28th March, 2011 and 29th March, 2011 respectively passed by the Trial Court in a suit for declaration and rectification of the deed and permanent injunction is a subject matter of challenge in this second appeal. We have carefully read the judgment of both the Courts and the grounds of appeal.

Briefly stated, Nandalal Mondal and Tarani Mondal were the joint owners of land measuring 52 decimals in dag no.433 as recorded in D.S.R.O.R. Nandalal Mondal at different time sold his portion of the suit plot and ultimately 8 decimals were left. Out of 8 decimals he sold 6 decimals to Rajani Rani Debya, wife of Sashibhushan Acharya. The said share devolved on Krishnapada on the death of Rajani Rani Debya. On the death of

Krishnapada, his share devolved upon three sons, namely, Nanda Acharya, Dulal Acharya and Madan Acharya in equal share. Nanda Acharya sold 2 decimals of land to the plaintiffs. The plaintiffs, thus, became the owner of 4 decimals of share. The plaintiffs claimed that by mistake in the deed, original dag was retained in place of new bata plot and the defendants being the legal heirs of Madan and Dulal, that is the sons of Krishnapada, taking advantage of the mistake were denying the right, title, interest and possession of the plaintiffs over the 'ka' schedule property. The defendant No.1 to 6 contested the suit. However, they have admitted that the suit dag originally belonged to Nandalal Mondal and Tarani Mondal in equal shares of 26 decimals each and this was, accordingly, recorded in D.S.R.O.R. Nandalal sold 6 decimals in the said doba along with some non suit lands to Rajani Moyee Acharya, the wife of predecessor in interest of defendants namely Sashibhushan Acharya vide a registered deed of sale in the year 1936. Thereafter after demise of Rajani, the father of the defendants inherited her share. It is submitted that though in the said deed the area of the doba was mentioned to be 6 decimals, actually 8 decimals were transferred and it was accordingly recorded in the name of the defendant and his two brothers in the R.S.R.O.R as plot no.433/1646. Thereafter, defendant no.1 sold away 2 decimals of land to Gobindo Mondal (the father of plaintiffs) and plaintiff

nos.2 and 3 vide a registered deed of sale in the year 1968 with a verbal agreement for repurchase. Subsequently, the defendant no.1 and his two brothers while exercising right, title, interest and possession over remaining portion of the said plot, the said two brothers of defendant no.1 namely Dulal and Madan transferred their shares to the 5 sons of defendant no.1, namely, Sukumar, Sambhunath, Biswanath, Hrishikesh and Tapas. Defendant no.1 along with his sons claimed to have been exercising their right, title, interest and possession over the suit plot. Defendants further contended that they have acquired a valuable right over the land in the suit plot by exercising adverse possession therein with complete knowledge and acquiescence of the plaintiffs since the predecessor in interest of the plaintiffs sold the land to Rajani Moyee Debya and this had been reflected in the R.S.R.O.R. and plaintiffs did not have any right, title, interest and possession in the suit land.

The defendants alleged that the plaintiffs in collusion with the settlement officials manipulated the erroneous recording in the L.R.R.O.R. In the suit, the plaintiffs relied upon certified copy of the D.S.R.O.R, R.S.R.O.R, certified copy of deed no.4554 of 1936, certified copy of L.R.R.O.R, rent receipt and deed no.5305 of 1968 in favour of their right. Similarly, the defendants have relied upon six documents, which, inter alia, include the certified copy of deed no.5305 of 1968. This, in fact,

common document that was marked as Exhibit-4 and Exhibit-B by the respective parties. The learned Trial Judge as well as the First Appellate Court relied upon three decisions of our Court, namely:-

- i) *Ram Krishna Mallick Vs. State of West Bengal* reported at (1975) 1 Cal LJ 154;**
- ii) *Chaturbhuj Misra Vs. State of West Bengal* reported at 82 CWN 335;**
- iii) *Sachin Ghosh Vs. Narayan Ch. Ghosh* reported at (2004) 1 WBLR (Cal) 236.**

to hold that the suit was for declaration and permanent injunction along with the rectification of the deed is maintainable. Both the Courts are of the view that when in a suit the principal issue is a question of title, a prayer for declaration that the record of rights is wrong, does not bring the suit within the mischief of Section 57B of the West Bengal Estates Acquisition Act or 51C of the West Bengal Land Reforms Act. The main issues involved in the suit were:-

- “1. Amount of land transferred by Nandalal Acharya in favour of Rajanimoyee;
- 2. Amount of land transferred by Nandalal Acharya to plaintiffs;
- 3. How much of Plot no.433 or 433/1646 was sold?”

The plaintiffs claimed right over 4 decimals of land being plot no.433/1646 which was originally recorded as

plot no.433 in D.S.R.O.R. The plaintiffs claimed that Nandalal Mondal sold 6 decimals of land to Rajanimoyee retaining 2 decimals while defendants contended that Nandalal sold entire 8 decimals and nothing was left for the plaintiffs to inherit. The Trial Court as well as the First Appellate Court relying upon Exhibit-3 from side of the plaintiffs and Exhibit-E from side of the defendants that is the certified copy of the deed no.4554 of 1936 held that the said document would show that 6 decimals of land was sold meaning thereby 2 decimals have remained with the vendor which the plaintiffs claim to have been inherited as his legal heirs. This also corroborated by the admission of D.W.1, Sukumar Acharya, in his cross-examination where he stated:-

“Nanda Mandal sold 6 decimal to Rajani Deby by that deed.”

It appears from the evidence and more particularly from R.S.R.O.R (Exhibit-2) that D.S. plot no.433 was sub-plotted into plot no.433 and plot no.433/1646. It raises a strong presumption that 2 decimals sold to the plaintiffs by Nanda Acharya by dint of Exhibit-4 is from plot no.433/1646 since it was done after the R.S. settlement at which point of time Nanda Mondal had a share in plot no.433/1646 and that the 2 decimals sold to the plaintiffs have come from the said plot no.433/1646 and not from plot no.433.

The concurrent findings of facts with regard to the title of the plaintiffs based on such cogent evidence do not call for any interference.

Accordingly, the second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)