

10.09.2024.
Court No.13
Item No. 7
pk

F.A. No. 228 of 2010
With
I.A. No. CAN 10 of 2021
And
I.A. No. CAN 11 of 2022

Amal Bhattacharjee & Anr.
Versus
Smt. Chitra Ghosh & Ors.

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta.

...For the appellants.

Re: CAN 11 of 2022 (Restoration)

1. Despite service of notice, the respondents are not represented. Affidavit-of-service filed in Court today be taken on record.
2. Sufficient grounds are available to explain the absence of the appellants and/or their Counsel on 11th April, 2022 before a Co-ordinate Bench of this Court.
3. The said order is recalled and the appeal is restored to its original file and number.
4. Accordingly, CAN 11 of 2022 is disposed of.
5. There will be no order as to costs

Re: F.A. 228 of 2010

1. The instant first appeal is directed against a judgment and decree dated 27th February, 2009 passed in Title Suit No. 95 of 2001 by the Third Court of the Civil Judge (Senior Division) at Howrah.
2. By the said judgment and decree, the Court below declared the title of the plaintiffs/respondents to the suit property and directed eviction of the

appellants and khas possession from the suit property was given to the respondents/plaintiffs.

3. The facts of the case are, inter alia, that the plaintiffs claimed to have purchased the suit property by three several Registered Deeds dated 26th August, 1994, 7th October, 1994 and 19th October, 1995 from one Krishna Narayan Bhattacharjee, the father of the appellants.

4. The father's title to the property was decreed in Title Suit No. 126 of 1978. The said Title Suit was filed by the father, after the death of his wife, Chapala Sundari Devi. He sought a declaration that Chapala Sundari Devi, his wife was a Benamider and he was the actual owner of the property having funded its entire purchase.

5. Based on the said decree, Krishna Narayan Bhattacharjee became the absolute owner of the entire Schedule "A" property. Originally the property was a vacant land. Krishna Narayan Bhattacharjee constructed a two storied building thereat.

6. The appellants are the children of Krishna Narayan Bhattacharjee, who had filed Title Suit No. 228 of 1994 claiming declaration and partition of the suit property which according to them stood in the name of the mother. The said suit was dismissed on contest. The appellants continued to occupy the ground floor as licencees of their father.

7. The respondents thereafter purchased the entire suit property as already stated hereinabove.

8. The suit was filed in the Court below for declaration that the respondents/plaintiffs were the lawful purchasers of the property in question from the declared owner being Krishna Narayan Bhattacharjee. In defence, the appellants challenged the title of the respondents and claimed to be co-sharers therein. They also asserted title to the property on the basis of adverse possession since the year 1978.

9. In the said suit, the appellants filed a written statement. The Court below framed four issues which are set out hereinbelow:

- “1. Is the suit maintainable in its present form and prayer?
2. Is the suit barred by principles of estoppels, waiver and acquiescence?
3. Are the plaintiffs entitled to get a decree as prayed for?
4. To what other relief, if any, are the plaintiffs entitled?”

10. The plaintiffs/respondents adduced evidence of one Pradiptamoy Ghosh, the original purchaser and/or predecessor-in-interest of the plaintiffs/respondents. The three title deeds were exhibited. In addition thereto, tax receipts, judgment and decree in Title Suit No. 126 of 1978 and other documents were brought on record by the respondents/plaintiffs.

11. The defendant nos.1 and 2, namely, Amal Bhattacharjee and Kajal Bhattacharjee deposed in evidence on behalf of the appellants.

12. The Court below found the suit maintainable and not barred under Section 41 (b) of the Specific Relief Act, 1963. The suit was held maintainable since the plaintiffs/respondents not only prayed for declaration but also possession and permanent injunction against the defendants and also sought eviction of the appellants and also khas possession of the suit property.

13. This Court is in complete agreement with the views of the Trial Court. The title of the respondents/plaintiff was clear explicit and established.

14. The other defence of the appellants in the Court below that they had acquired title by adverse possession since 1978 was also rejected by the Court below.

15. This Court notes that admittedly the defendants were inducted as licensees under their father and remained in possession as such licenses since 1978.

16. It is now well-settled that if there is a legally identifiable relationship in law between an occupier of a property and its owner, a claim and title by adverse possession cannot be maintained. Such relationship can be in the nature of licensees, tenants, lessees or a category of mortgagees.

17. In view of the above and having regard to the entire evidence on record, this Court cannot find fault with the impugned judgment and decree dated 27th February, 2009.

18. The execution proceedings, if any, initiated by the respondents may continue.

19. F.A. No. 228 of 2010 shall stand dismissed.

20. In view of the dismissal of the appeal itself, the connected application being CAN 10 of 2021 shall also stand dismissed.

21. Interim order, if any, shall stand vacated.

12. T.C.R., if any, be returned to the Court below.

14. The Registry of this Court shall communicate a copy of this order to the Court below for necessary information.

15. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)