

04.10.2024
Court No.13
Item No. 49
sp

FA 41 of 2007

Kanaka Mondal and Ors.

Vs.

Arun Mondal and Ors.

(Swetbarani Mondal since deceased)

Mr. Subrata Karmakar

Md. Ali Ahasan

... For the Appellants.

Mr. Kishore Mukherjee,

Mr. Soumyajit Mukherjee,

Ms. Suman Biswas

..for the respondent nos. 1(a), 1(b) and 1(c)

1. The instant appeal is directed against a judgment and order dated 11th July, 2006 passed by the learned Civil Judge (Senior Division), Durgapur, Bardhaman in T.S. No. 36 of 1998. The plaintiffs are the defendants in the suit. The appellants and the respondents trace their title to one Harinarayan Mondal. Harinarayan Mondal possessed 16 acres of land under various plot numbers in Khatian Nos. 77, 12, 143 and 119 under Mouza- Saraswatigange, District- Bardhaman under Police Station- Kanksa.

2. Harinarayan Mondal had two sons, namely, Hrishikesh Mondal and Sashibhushan Mondal. Sashibhushan Mondal predeceased his father, leaving behind widow Jamuna Mondal (died in October 1984) and daughter Dhanibala Mondal (died in 1980). Dhanibala Mondal had two daughters, namely,

Khelarani Mondal and Swetrani Mondal. They were the plaintiffs in the suit in the Court below. They claimed their grandmother, Jamuna Mondal's share in the property of Harinarayan Mondal i.e. 50% share, through their mother Dhanibala Mondal.

3. Since after the death of Harinarayan Mondal, Sashibhushan Mondal having predeceased him, his elder son Hrishikesh Mondal looked after the entire property which included land and a residential house. The evidence on record is not clear as regards when exactly Harinarayan Mondal died. There is no document produced by the parties.

4. The plaintiffs/respondents stated that Harinarayan died sometime in 1960's. The defendants have pleaded in the written statement and deposed evidence that he died prior to the Hindu Succession Act, 1956 coming into force. The defendants are the legal heirs of Hrishikesh Mondal. They are the original defendants. They are Kanaka Mondal (daughter-in-law), Sanatan Mondal (grand son) and Anjala Mondal (grand daughter).

5. It is an admitted position that Hrishikesh Mondal after the death of Harinarayan Mondal managed most of the properties which included open lands. After Hrishikesh Mondal, his son Lambodhar Mondal, took up the charge of management of the

properties. Jamuna Mondal and Dhanibala Mondal were illiterate and lived in the house property. A portion of the house property remained in the possession of Khelarani Mondal and Swetrani Mondal although they resided in their respective matrimonial house. They were in possession until 1984 through Jamuna Mondal, their grandmother.

6. Sometime in 1974, Lambodhar Mondal sold portions of the property to the defendant nos. 4 to 10.

7. It is stated in the plaint that sometime in 1998, the original plaintiffs sought partition of the suit property from Sanatan Moindal, son of Lambodhar Mondal. Upon being refused, they started to collect documents of title with regard to their grandmother and Hrishikesh Mondal's share in the property.

8. They discovered the name of their mother Dhanibala Mondal and grandmother Jamuna Mondal in the R.S. records. The C.S. records, however, indicated the name of Harinarayan Mondal in respect of the entire properties.

9. It is now well-settled in an undisputed proposition of law that a record of rights can at best indicate possession but does not establish title. Upon refusal of Lambodhar Mondal to partition the property amicably, the respondents Khelarani Mondal and Swetrani Mondal filed the instant suit for partition in

the trial Court below. The defendant nos. 1 to 3 were Kanaka Mondal, Sanatan Mondal and Anjala Mondal. The defendant Nos. 4 to 10 were the 3rd parties purchasers from portions of the property from Lambodhar Mondal.

10. As already stated above, the plaintiffs were the descendants of the other son of Harinarayan Mondal, namely, Sashibhusan Mondal.

11. Two sets of written statements, namely, by defendant nos. 1 to 3 and defendant nos. 4 to 10 were filed in the trial Court below.

12. The defendants contended that since Harinarayan Mondal died prior to the coming into force of the Hindu Succession Act, 1956, Jamuna Mondal had, at best, a life interest in the property. Upon her death, the entire property would have vested in the male lineage of her husband, i.e., Hrishikesh Mondal and his descendants. The defendant nos. 4 to 10 denied the entire plaintiffs' case and claimed to have lawfully purchased the suit property from the descendant, i.e. the son of Hrishikesh Mondal, i.e., Lambodhar Mondal. Based on the pleadings, the trial Court below framed the following issues:

1. Is the suit maintainable in its present form?
2. Is the suit barred by law of limitation?

3. Have the plaintiff cause of action to file the suit against the defendants?
4. Has this Ld. Court jurisdiction to try this suit?
5. Is the suit barred by provision of Specific Relief Act, Transfer of Properties Act and L.R. Act?
6. Is the suit had for non-joinder and mis-joinder of necessary parties?
7. Is the suit properties mentioned in the schedule of the plaint vague and indefinite?
8. Have the plaintiff right, title and interest in and over the suit properties to the extent of 8 annas share?
9. Are the plaintiffs entitled to get decree as prayed for?
10. To what other relief or reliefs have any are plaintiffs entitled?

13. On behalf the plaintiffs there were two witnesses, namely, PW/1, i.e., Swetrani Mondal and PW/2, i.e., Kotai Roy. On behalf the defendants, Sanatan Mondal, son of Lambodhar Mondal as DW/1 and DW/2 was Haradhan Saha, a 93 year-old resident of the said village, Saraswatigange.

14. Based on the evidence on record, the trial Court went on to hold that the plaintiffs and the defendants had 8 annas share each in the properties of late Harinarayan Mondal.

15. This Court has very carefully considered the findings of the trial Court below. The crux of the issue is found on the fact that irrespective of as to whether

Harinarayan Mondal died before the Act of 1956 came into force or thereafter, his second daughter-in-law Jamuna Mondal, having a life interest in 50% of the estate of Harinarayan Mondal, continued to live until October, 1984. By reason of the Hindu Woman's Right to Properties Act, 1935 and the Hindu Law of Inheritance (Amendment) Act, 1929. Jamuna Mondal a life interest in half of the estate of Harinarayan Mondal. Such life interest got converted to a full-fledged title by reason of Section 14 of the Hindu Succession Act, 1956.

16. In those circumstances, the findings of the trial Court below and the passing of the preliminary decree based on such finding cannot be faulted.

17. In addition thereto, the trial Court below found entries in the name of Harinarayan Mondal's granddaughter Dhanibala Mondal and his daughter-in-law Jamuna Mondal in the R.S. record. The name of Harinarayan Mondal however continued in the C.S. records of rights which came into force sometime in 1960-61.

18. For the reasons stated hereinabove, the appeal fails and hereby dismissed.

19. The trial Court below shall proceed to pronounce final decree of partition after due process of law within

a period of 4 months from the date of communication of a copy of this order.

20. Let the Commissioner of partition be appointed immediately. The Commissioner shall submit a report within a period of one month from date to the trial Court after circulation of the report to all parties. After the Commissioner's report is tested in accordance with law, the trial Court below shall pass final decree within the time stipulated hereinabove.

21. There shall be no order as to costs.

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

23. The registry shall communicate a copy of this order to the Court below.

24. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)