

05.02.2024

Court : 04
Item : 23
Matter : SAT
Status : DISMISSED
Bench ID : 266176
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

APPELLATE SIDE

**SAT 48 of 2023
with
CAN 1 of 2023**

Abdul Kasim & Ors.
Vs.
Sadgar Sk. & Ors.

**Mr. Partha Pratim Roy, Advocate
Mr. Dyutiman Banerjee, Advocate**

.....for the Appellants

1. The plaintiffs/appellants are unsuccessful in both the Courts below in establishing their right, title and interest in respect of the suit premises. The said suit was instituted for declaration of title on the basis of C.S. Record of Right which stands in the name of one Hossain Sarkar. The property had undergone several transactions and there appears to be a dispute on the title claimed by the rival parties.
2. The contesting defendants/respondents traced their titles through Riajuddin Sarkar and Ekram Ali and relied upon several deeds effecting the sale of the said premises. It is categorically stated by the contesting defendants/respondents that the said Riajuddin Sarkar and Ekram Ali were the original owners having undivided equal shares in the suit premises which would further be corroborated by an entry made in the R.S. Record of Right and L.R. Record of Right.
3. Both the Courts held that the plaintiffs/appellants have miserably failed to prove their title in respect of the suit premises and consequently dismissed the suit as well as the First Appeal.
4. Learned Counsel for the appellants submits that the Court of appeal below committed serious error in

holding that though the first witness of the contesting defendants/respondents admitted the ownership of Hossain Sarkar, such admission should have been construed in the proper perspective. We have been taken to the relevant portion of the judgment of the First Appellate Court with regard to the findings made in relation to an admission as perceived by the Counsel for the plaintiffs/appellants. Even the certified copy of the deposition for the first witness of the contesting defendants/respondents is produced before us, which explicitly indicate that the said witness was not sure whether the said Hossain Sarkar was the original owner of the suit property or not. However, in the next breath the said witness deposed that after the demise of the said Hossain Sarkar, his legal heirs inherited the suit property in accordance with law of inheritance recognized under the Mohammadan Law.

5. In order to construe the depositions, the Court should not be swayed by a single word or the sentences but must read such depositions in its entirety. The segregation from the larger context should be eschewed and the avoidance should be ensured. The cardinal issue involved in the instant appeal is whether the entry made in the record of right creates any title into a person and the ancillary issue evolved therefrom is whether the entry made in the latter record of right would prevail over the entry in the early record of right.
6. So far as the main issue, as indicated here-in-above is concerned, it is no longer *res integra* that the entry made in the record of right neither creates title nor extinguishes title of a person. Equally true it is that there is a presumption of correctness in the entry

made in the record of right unless rebutted by the other side. Both the persons have relied upon the entry made in the respective record of rights and claimed their right, title and interest in respect of the suit premises.

7. As indicated above, the title is traced through several deeds by the respective parties from a different owner whose name is recorded in the respective record of right. The moment there is a conflict between the C.S. Record of Right and the R.S. Record of Right, it is the latter, which would prevail.
8. The plaintiffs/appellants traced their title from the person recorded under the C.S. Record of Right on the other hand the contesting defendants/respondents are deriving their right, title and interest from a person whose name is recorded in the R.S and L.R. Record of Right. The C.S. Record of Right in the earlier one followed by the R.S. and L.R. Record of Right, it is the latter which would prevail.
9. Apart from the same, the plaintiffs/appellants have miserably failed to prove any title document which would fortify their contention that the entry made in the record of right is erroneous.
10. In absence of the same, we do not find that both the Courts have committed error in dismissing the suit.
11. There is no substantial question of law involved in the instant appeal.
12. The appeal being **SAT 48 of 2023** and the connected application being **CAN 1 of 2023** are **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

