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Ct. No. 04

akd

S.A. 79 of 2023
CAN 1 of 2022

Alema Biswas & Ors.

Vs.

Tahera Shaikh & Ors.

Mr. Chittaranjan Chakraborty,

Ms. Puspa Rani Jaiswara,

Mr. Sumit Banerjee.

... for the appellants.

Mr. Surya Pasad Chattopadhyay,

Mr. Arjun Samanta.

... for the respondents.

A right is sought to be claimed in respect of the property solely on the strength of the entry made in the Record of Rights disputing the stand that the said property was the subject matter of acquisition proceeding initiated under Act-I of 1989.

It is a suit simplicitor for permanent injunction against the defendants/appellants from interfering with the possession in respect of the property described in Schedule 'A' appended to the plaint and mandatory injunction against the defendants/appellants to remove the obstructions caused to the 'A' Schedule property and also to remove the constructions made upon the 'B' Schedule property.

The case made out in the plaint proceeds on the basis that their vendors inherited the property described in Schedule 'A' to plaint from their predecessor in equal share and subsequently sold, transferred and conveyed the same to the proforma defendant being the husband of the plaintiff/respondent. It is further averred that the proforma respondent being in military service was unable to look after the affairs of the 'A' Schedule property and entrusted upon the wife to do the needful. It is further stated that the name of the predecessor in

interest of the proforma defendant is duly recorded in the finally published L.R. Record of Rights and on divestation of their right, title and interest the proforma defendant acquired the absolute right over the title of 'A' Schedule property.

It is indicated in the plaint that the 'B' Schedule property was the subject matter of an acquisition proceeding initiated way back in the year 1963 and there is an existence of *Noinjuli* (ditch) by the side of the road creating an obstruction to the ingress and egress from the 'B' Schedule property to 'A' Schedule property.

The defendants took a stand that the 'B' Schedule property belonged to them on the strength of entry made in the Record of Rights and on the strength that there was no acquisition proceeding ever initiated in respect thereof. The claim is also founded upon the law of acquisition as they claimed to have inherited the same from their predecessor.

Since the erroneous entry in the Record of Rights was also averred in the said suit, the Government officials / Government Department were also made party. Both the Courts below found that the defendants have failed to establish their right, title and interest in respect of 'B' Schedule property and proceeded to decree the suit in favour of the plaintiff, who is admittedly found to have right, title and interest in respect of the 'A' Schedule property.

The learned Counsel appearing for the appellants vociferously submits that both the Courts below have not taken into consideration the defence taken by the defendants/appellants and, therefore, the judgement rendered by both the Courts below are liable to be interfered with. It is further submitted that the Record of Rights stands in the name of the defendants/appellants, which is undenied and,

therefore, it cannot be construed that the 'B' Schedule property was ever acquired by the Government upon initiating an acquisition proceeding.

Though feebly it is sought to be contended that the Government officials, in fact, admitted that the Record of Rights stands in the name of the appellants having right, title and interest in respect of 'B' Schedule property and, therefore, both the Courts below have wrongly held that the plaintiff/respondent is entitled to decree as prayed for.

There appears to be fallacy in the submissions advanced by the learned Counsel for the appellants before us. At the very outset we must recapitulate the proposition of law promulgated in respect of claim of title on the strength of entry made in the Record of Rights.

It is no longer res-integra that the entry made in the Record of Rights neither creates title nor extinguishes such title. The entry made in the Record of Rights may have a presumptive value of possession but the same is not sacrosanct and susceptible to be rebutted on the basis of valid and cogent evidence. The entry made in the Record of Rights is only for the purpose of making a person liable to pay the Government revenue imposed upon a land, but has no bearing in creating any title into a person which can only be created by taking recourse to the provisions contained under the Transfer of Property Act and Registration Act. There is no document of title forthcoming from the possession of the defendants/appellants, as they simply banked upon the entry made in the Record of Rights in support of their contention that they have acquired the right, title and interest, which in our opinion cannot be a conclusive proof of title.

Exhibit 4, 6 and 6A would reveal that the proceeding was initiated for acquisition of the property described in Schedule 'B' to the plaint way back in the year 1963; which culminated into a determination and payment of compensation and possession taken by the Government. The aforesaid documents are sufficient enough to indicate that even if the Record of Rights stands in the name of the defendants/appellants, but the same was the subject matter of acquisition and, therefore, the findings of both the Courts below in this regard cannot be said to be perverse or based on no material.

We are conscious that it is a suit simplicitor for permanent and mandatory injunction and the question of title may be irrelevant, yet the defendants/appellants have raised such issue of title, which appears to us to have incidentally involved in the said suit and, therefore, such findings of both Courts below cannot be perceived to have been made beyond the scope of the reliefs claimed in the plaint.

Though it is sought to be contended that the Government officials, who were called as witnesses, corroborate the case of the defendants/appellants, but we find from the concurrent findings returned by both the Courts below that the Government officials had corroborated the case made out by the plaintiff/respondent that the 'B' Schedule property was the subject matter of acquisition and belonged to the Government. Mere wrong entry into the Record of Rights can never be perceived as creation of a right. Furthermore the application for correction of Record of Rights is also pending before the appropriate authority and, therefore, we do not intend to make any comment thereupon.

We do not find that there is any plea taken by the appellants that the access to the 'A' Schedule property is not through the 'B' Schedule property and, therefore, we do not find any infirmity in the impugned judgement that the mandatory injunction was passed for removal of the obstructions and restoration of the free passage for ingress and egress to the 'A' Schedule property.

The reliefs claimed in the plaint has to be read conjointly with the pleadings made therein and there is no fetter on the part of the Court in passing a mandatory injunction provided the pleadings and evidence in support thereof have been led by the parties thereto.

We, therefore, do not find any substance in the contention of the learned Counsel for the appellants that there was no relief claimed in respect of the 'B' Schedule property and, therefore, the Court ought not to have granted the mandatory injunction; rather we find that there is specific relief claimed in this regard and, therefore, his contention does not appear to be correct.

We thus do not find any substantial question of law involved in the instant appeal. The same is hereby dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequently the connected application is also dismissed.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)

