

04.09.2024.
Item No. 39.
Court No. 13
ap

F.A.T. No. 264 of 2016
With
I.A. No. CAN 1 of 2016 (Old CAN 6279 of 2016)

Smt. Kalpana Bhowmick & Ors.
Versus
Smt. Pramila Barman & Ors.

Mr. Subir Banerjee,
Ms. Dipanwita Das.

...For the appellants.

1. The Advocate-on-record for the appellants undertakes to rectify the defects pointed out by the Additional Stamp Reporter in his order dated 21st June, 2016.
2. The instant appeal is directed against judgment and decree dated 5th April, 2016 passed by the learned Civil Judge (Senior Division) at Dinhata, Cooch Behar in Title Suit No. 29 of 2014 (Kalpana Bhowmik & Ors. – Vs. – Pramila Barman & Ors.).
3. The facts relevant to the case are that the predecessor-in-interest of the plaintiffs/appellants purchased 19 decimals of land in R.S. Plot No. 2815 and R.S. No. 2822 from one Kiran Bala Dey.
4. They sold about 7.80 decimals of land out of the aforesaid 19 decimals to Chaya Rani Chowdhury and Dayal Chandra Pal sometime in the year 1999-2000. The said Chaya Rani Chowdhury and Dayal Chandra Pal have constructed permanent structures therein and are living thereat.

5. The plaintiffs sought a decree for declaration and possession for 11.20 decimals in the aforesaid two R.S. plots of lands excluding the land of the proforma defendants already sold.

6. Admittedly, the names of the plaintiffs have not been recorded in the ROR. According to the plaintiff, the defendant nos.1 to 4 in the suit are stated to have forcefully occupied a portion of the plaintiffs' property.

7. The predecessor-in-interest of the defendant nos.1 to 4/respondents herein have also acquired portions of the said R.S. plot Nos. 2822 and 2815 from the predecessor-in-interest of the plaintiffs.

8. According to the plaintiffs, the predecessor of defendant nos.1 to 4 in collusion over the Block Land & Land Reforms Officer, Dinhata-I, Coochbehar district, recorded the entire 39 decimals of land including the suit land in the ROR in R.S. Khaitan No. 907. Later defendant nos. 1, 2 and 4 in collusion with BL & LRO, Dinhata, recorded the entire 19 decimals of land in their names being L.R. Khatian No. 6985, 6986 and 6987. The plaintiffs lodged a claim under the West Bengal Land Reforms Act, 1955 for rectification of records and mutation of the property in their names, being Mutation Case No. 530 of 2014 pending consideration.

9. It is submitted that sometime on 9th March, 2014 the defendant nos.1 to 4 along with the muscle men entered into the property and occupied the same

after dispossessing the plaintiffs. It is further submitted that Block Land & Land Reforms Officer, Dinhata-I has rejected the mutation case No. 530 of 2014.

10. The defendants filed written statement and contested the claim of the plaintiffs and denied each and every allegation. They traced out file and laid claim in respect of the 19 decimals and additionally the suit land claimed by the plaintiffs.

11. The Court below framed issues and received evidence. Both sides exhibited the title deeds in support of their claims.

12. The Court below found that the defendants were at best entitled to one decimal of land. It also found that the plaintiffs may have originally been entitled 19 decimals of land out of which the plaintiffs have admittedly sold portions and are left with 11.20 decimals of land. The Court below went as far as, declaring in its judgment, the shares of the properties indicated above.

13. However, what weighed with court below, against the appellants/plaintiffs was the fact that their predecessor-in-interest, Kiran Bala Dey had purchased 19 decimals of land from a co-sharer of a larger portion of the land. The demarcation of share of 19 decimals of land of the vendors of Kiran Bala Dey was not found to have been done at any point of time.

There was no demarcation found by the Court below in any of the documents exhibited in the suit.

14. At the interlocutory stage in the suit the Court below tried to ascertain the demarcation of the plaintiffs lands. A Survey Commissioner was appointed. The Survey Commissioner has stated that he was not in a position to demarcate the land. The report of the Survey Commissioner has been exhibited in the Court below.

15. Based on the above, the Court went to hold that in absence of demarcation, no relief can be granted to the plaintiffs/appellants. The suit was accordingly dismissed.

16. Learned Counsel appearing on behalf of the appellants, before this Court would argue that once the Court below had declared that the defendants can at best have one decimal of land and the plaintiffs could have 11.20 decimals of land, the Court below should have gone ahead to pass a decree of possession in favour of the plaintiffs. This was an error committed by the Court below for which the entire suit filed by the plaintiffs has been rendered useless.

17. It is now well settled that a suit for mere declaration cannot be maintained under the Specific Relief Act, 1963.

18. The plaintiffs have indeed prayed for a declaration of title, a decree for possession and permanent injunction in the Court below. If on the

basis of the evidence on record, the trial Court can only go as far as the pronouncing a declaration and no other relief is permissible, the suit is indeed liable to be dismissed as has been rightly done by the Court below.

19. The title of the predecessor-in-interest in respect of the land of 19 decimals as reduced from time to time at the instance of the plaintiffs themselves may sound distinct and crystal clear on paper. There is no demarcation whatsoever of the aforesaid 19 decimals of land purchased by the predecessor-in-interest of the plaintiffs i.e. the said Kiran Bala Dey.

20. It was not possible for the Court below in a title suit between the plaintiffs and the defendant nos.1 to 4 to pass any decree for possession when the demarcation of land of the parties is not available either on record or with the Office of the Block Land & Land Reforms Officer, Dinhata-I .

21. In view of the above, this Court cannot find fault with the impugned judgment and decree dated 5th April, 2016 passed by the learned Civil Judge (Senior Division), Cooch Behar at Dinhata. The same is upheld.

22. The instant order and the decree of the Court below shall not prevent the appellants from establishing the extent of their rights in the property before any other forum in accordance with law.

23. F.A.T. No. 264 of 2016 must fail and is hereby dismissed. Consequently, all the pending applications shall also stand dismissed.

24. There will be no order as to costs.

25. 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.)