

31.07.2024
Court No.04
Item No.13
BD.

SAT 94 of 2024
IA No. CAN 1/2024

Sri Sajal Sarangi @ Prabal Sarangi & Anr.
Versus
Sri Manindranath Sarangi

Mr. Debasish Roy
Mr. Koustava Ratan Chatterjee
...For the Appellants.

Mrs. Shohini Chakraborty
Mr. Arijit Sarkar
Ms. Prajaaini Das
... for the respondents.

1. The learned counsel for the appellants have produced the print out obtained from the Calcutta High Court's website to submit that the deficit Court fees have been put in on 09.07.2024.
2. Let the court fee be tagged with the records.
3. The print out be also retained in the records.
4. The case of the plaintiff/ respondent who is father of the appellant No. 1 and father-in-law of appellant No. 2 is that the suit property was acquired by a registered deed in the year 1981 and house constructed thereupon in the year 1984. After undertaking some expansion of the structure, he allowed the appellant No. 1 to reside therein along with his second wife (appellant

No. 2) in the month of March 2001 on the assurance that the appellants will quit and vacate the property as and when asked for. When the plaintiff requested the appellants to quit and vacate the suit premises in the year 2018 they started misbehaving and demanding that the plaintiff transfer the suit property in favour of the appellant No. 1. Under such circumstances, the plaintiff determined the license by serving a notice dated 05.05.2018 whereby 7 days' time was granted to quit and vacate the suit premises. Separate notice was served on defendant/appellant No. 2 the defendant/appellants thereafter started interfering with the plaintiff's access to the suit property compelling him to approach the High Court for appropriate directions under writ jurisdiction. It is the case of the plaintiff/respondent that the appellants committed to vacate the two rooms out of four rooms in the suit property in the writ proceedings arising out of W.P. 17874 (W) of 2018. They, however, failed to keep their promise. The plaintiff thereafter excluded the defendant No. 1 from inheriting his property by executing a

Will. The continued misbehaviour of the defendant prompted the plaintiff to determine the licence of the defendants over the suit property premises on 05.05.2018 by giving 7 days' time to quit and vacate the premises. Another notice was also served on 17.08.2018. It is under such circumstances that the plaintiff filed the suit for eviction and recovery of possession. The defendant/appellants took a stand in the suit that the defendant No. 1 being son of the plaintiff, there cannot be a landlord and licensee relationship. The defendant No. 2 (wife of defendant No. 1) claimed protection from eviction under the Protection of Women from Domestic Violation Act, 2005. According to the defendant No. 1 he was residing in the suit premises since the year 1990 at a time when the construction of building was incomplete. He is also carrying on his business, and residing there. The suit premises were verbally gifted to the defendant in November, 1999 by the plaintiff on the assurance that he will execute the document in this regard and handover the same with

the original purchase deed of the suit property.

5. It is further case of the defendant/ appellants that some promoters have allured the plaintiff/ respondent with lucrative prospects whereafter the plaintiff had the intention to sell the suit premises in spite of the fact that the same had been gifted earlier to the defendant No. 1. The defendant No. 1 has also asserted that since November 1999, he is exercising his title and possession of the suit premises continuously, denying the title of the plaintiff and thereby asserting his hostile title by adverse possession in respect of the suit property. Upon consideration of the case the Trial Court has passed a decree of eviction directing the defendant/appellants to vacate the suit scheduled property and to deliver khas possession of the same in favour of the plaintiff within 60 days from the date of delivery of the judgment. In failure thereof the plaintiff has been given liberty to get the judgment/decreed executed as per law.
6. Considering the stand of the parties the Trial Court has framed the following issues:

“1) Is the suit maintainable in its present form and prayer?”

2) Is there any cause of action for the plaintiffs to file this suit?”

3) Whether the plaintiff has right, title, interest in respect of the suit property?”

4) Is the plaintiff entitled to get the decree, as prayed for?”

5) To what other relief or reliefs if any, is the plaintiff entitled to get?”

Additional Issue

“a) Whether the defendants are licensee under the plaintiff?”

b) Whether the defendants are protected from eviction from the Suit premises under the provisions of P.W.D.V. Act?”

c) Whether the notice to quit was legal, valid and sufficient and binding upon the defendants?”

7. The plaintiff has adduced documentary evidence and examined himself as P.W. 1. In support of his title to the suit property he has adduced the perpetual lease deed of the year 1981 Exhibit 2 is the document issued by the Revenue Authority showing that the plaintiff has been paying the land revenue in respect of the suit property. Documents have been also produced to show the plaintiff is having a municipal holding number of the suit property in his name and receipts showing payment of municipal tax. The LRROR in

respect of the respective Khatian No. 2548 also stands in the name of the plaintiff. Thus acquisition by way of a perpetual lease and continued right, title and possession was established by way of evidence. During cross-examination D.W.1 has also admitted regarding acquisition of title by the plaintiff over the suit property by the perpetual lease deed dated 13.04.1981. The notice dated 05.05.2018 and its service upon the defendant/appellants has also been proved by marking the notices as Exhibit-4 series.

8. On the other hand, the defendant/appellants have failed to adduce any evidence in support of the alleged gift of the schedule property by the plaintiff. In fact, in his deposition D.W. 1 specifically admitted that there is no document acknowledging the alleged verbal gift of the suit scheduled property. Electricity bills and some educational testimonial and birth certificate of the offspring of the defendant/appellants have been adduced to show that in these documents they have mentioned the address of the suit scheduled property as their residence. The Trial Court has upon consideration of the rival pleadings

and submissions; and the law by way of precedents cited by the parties decided all the issues in favour of the plaintiff/respondents. Exhibit-A collectively before the Trial Court contains the orders passed by the High Court in the writ proceedings at the instance of the plaintiff. The implied admission of the defendants regarding title of the plaintiff before the High Court has been considered by the Trial Court has also the several other material noted above. The defendants have been held to be licensees in the suit property as the property in question was self-acquired by the plaintiff/ respondent who happens to be the father of the defendant No. 1 and father-in-law of defendant No. 2. The claim of defendant No. 2 that she had a right to residence in the premises under the provisions of the Protection of Women from Domestic Violation Act, 2005 has thus been negated. The suit property not being a family property; and being an exclusive property of the plaintiff, such claim of the defendant No. 2 has been found unsustainable. Considering the fact that the license was duly revoked by the plaintiff, he has been found entitled to a

decree of eviction and possession of the suit property.

9. Both the Courts below have concurrently come to a finding regarding the present appellants who happened to be the son and daughter-in-law of the plaintiff being a trespasser in the suit premises by virtue of a lapse of the license based on a notice dated 05.05.2018 given by the plaintiff terminating the license.

10. Learned counsel for the appellants submits that the appellants be granted some time for vacating the premises in question.

11. Having said so it is also submitted that both the Courts below have failed to consider the specific plea of the present appellants that the premises in question was given to them by a verbal gift by the plaintiff/respondent.

12. Upon going through the judgment of the Trial Court we find that beyond making such assertion in the pleadings the present appellants have not adduced any evidence whatsoever to substantiate their claims regarding possession of the premises by virtue of a verbal gift.

13. We find that the defendant has also raised a plea of adverse possession. Whether a plea of adverse possession and possession by virtue of a verbal gift can co-exist or not, has rightly been considered by the court with reference to the decision of the Apex Court in the case of **Narasamma and Ors. -vs- A. Krishnappa** Reported in (2020) 15 SCC 2018 wherein the Apex Court has held that a plea of independent title which in the instant case is based on a verbal gift; and a plea of adverse possession are incapable of coexisting.
14. The legal position has succinctly been elaborated by the Apex Court that when a plea of adverse possession is projected, it is inherent in its nature that someone else is the owner of the property. In such a context the Apex Court has held that the plea based on title and adverse possession are mutually inconsistent, as adverse possession cannot begin to operate unless the independent title is renounced.
15. Having considered the judgment of the Apex Court the claim of the appellants has been rejected and the decree of eviction

treating the appellants as licensees has been passed. The decree has also been affirmed by the First Appellate Court.

16. The findings regarding the status of the present appellants as licensees in the suit premises is based on a valid consideration of various documentary evidence including the original perpetual lease deed dated 13.04.1981. The plaintiff has also adduced documentary evidence in the form of municipal tax receipt of the suit scheduled property standing in his name as well as the khajana dakhila dated 29.10.2013. The LRROR in respect of the Khatian No. 2548 in the plaintiff's name and documents showing the municipal holding in his name have also been marked as exhibits in the suit.

17. The present appellants, who were the defendants in the trial court have failed to adduce any evidence whatsoever in respect of their purported claims of verbal gift of the premises in question.

18. In view of consideration above, we find no reason to interfere with the concurrent determination made by both the Courts below regarding the status of the appellants

as licencees and existence of circumstances for their eviction from the premises in question.

19. We find no substantial question of law involved in the present appeal.

20. The appeal and the connected applications are dismissed.

21. Urgent Photostat certified copy of this order, if applied for, be supplied to parties on priority upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)