

17.01.2024
(Sl. 15)
Court No.-4
(A.D.)

S.A. 55 of 2023

Sri Swapan Kanti Deb alias Swapan Kumar Deb.

Vs.

Smt. Gouri Chanda.

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The plaintiff filed a suit for khas possession upon eviction of the defendant.

The defendant is the appellant in the instant proceedings. The plaintiff's case was based on inheritance of right, title and interest in the suit property being the bastu land measuring more or less 1 cottah 8 chittack in R.S. Dag No. 728/1593 under North Dumdum Municipality, Mouza Gouripur, under Rayati khatian No. 201 within P.S. Airport, District North 24 Parganas, earlier acquired by his wife, Late Sukriti Chanda. The lands were acquired by a registered Kabala dated 21.11.1986 from one Shri Sankar Das. The plaintiff's wife thereafter constructed a room with tile shed for dwelling purposes on a portion of the land. During her lifetime the plaintiff's wife gave oral license to the defendant (grandson of plaintiff's wife's sister) to live in the suit property. The

defendant had agreed to vacate the same within 5 to 6 months, or if required by the licensor, earlier. The licensor died issueless on 18.3.1988 whereafter her husband, the plaintiff inherited the property and got issued several letters through his lawyer to the defendant urging him to quit and vacate the suit property. On refusal to do so, suit was filed by the plaintiff.

At the trial the defendant filed his written statement and raised a plea that acquisition of the suit property and construction of the dwelling unit thereupon was funded to the tune of Rs. 30,000/- (Rupees Thirty Thousand) by his father Chitta Ranjan Dey. The defendant has thus claimed that the licensor was a Benamidar of the defendant. The defendant has also disputed and challenged the marital relationship of the plaintiff with the lessor Sukriti Chanda. He has stated that she was married since before, with one Promod Ranjan Goswami. At the time of alleged marriage of the licensor with the plaintiff she had a husband living and, therefore, the claimed marriage of the plaintiff with the licensor is denied and disputed by the defendant. He has also stated that during the lifetime of the licensor the plaintiff had

married another woman with whom he has been leading a happy conjugal life. Defendant claims to have been in possession of the suit property since its acquisition by the licensor in November 1987. He claims that he was looking after the licensor who as per relationship happens to be his maternal grandmother and he was never a licensee over the suit property.

On consideration of the case of the plaintiff and defendant, the documents exhibited at the trial and the deposition/s, the Trial Court has decreed the suit in favour of the plaintiff/respondent. The same has been affirmed by the First Appellate Court namely the 7th ADJ Court, Barasat, North 24 Parganas by Judgment dated 27.04.2023. The concurrent findings by these two Courts on the case of the respective parties, in favour of the plaintiff/respondent has been taken up by way of a second appeal in the instant proceedings by the appellant/defendant.

From the case of the parties, based on submissions advanced by the learned Counsel for the appellant herein, we find that rather than asserting, let alone establishing any semblance of right, title or interest in the suit

property, the appellant/defendant has denied and disputed the validity of the marriage of the plaintiff with the lessor, claimed the acquisition of the property to be funded by his father and thereby set up a claim of Benamidar. The defendant, however, has not brought any evidence at the trial to establish that any funds were made available by his father to the lessor for acquisition of the suit property. He has merely produced one letter (Exhibit 'C') addressed to him by his father wherein it is stated that he had sent Rs. 30,000/- to the lessor for purchasing some land in the name of the defendant. No document has, however, been produced at the trial, nor any witness has deposed that such claimed amount was ever received by the lessor for purchase of the suit property. During his cross-examination the defendant has admitted that he cannot produce any document to show that he looked after the lessor. He has not filed any counter-claim in the suit, if the same could have been legally filed, claiming the Benami transaction in respect of the suit property. The Sale Deed (Exhibit 1) from which the lessor acquired right, title and interest in the suit property, has also never been put to challenge by the

defendant. The recitals therein clearly show that the purchaser/ lessor has described herself as wife of the plaintiff. That apart, a marriage certificate dated 20.12.1982 (Exhibit 20) has also been produced by the plaintiff at the trial. From perusal of the same the Trial Court has recorded a finding that the parties to the marriage appeared in presence of the Marriage Registrar, whereupon the registration certificate was issued acknowledging their marriage since 13.03.1971. The certificate is of a date much (about 11 years) prior to the institution of the suit. The marriage certificate remains unchallenged by the defendant and bears proper seal and stamp of the concerned authority. Under the circumstances, there was no material or occasion for the Trial Court to in any manner doubt the correctness of the same. We also observe that the appellant/ defendant has not set up a case claiming inheritance of the property from the lessor.

We, thus, do not find any infirmity and/or illegality in the judgment of the Appellate Court. The concurrent assessment and findings on the case of the plaintiff and

defendant, favourable to the plaintiff does not involve any substantial question of law.

We, therefore, dismiss the second appeal under Order XLI Rule 11 C.P.C.

There shall be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)