

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

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

**SAT 145 of 2023
With
CAN 1 of 2023**

Sri Abhoy Mondal & Ors.

-Versus-

Asim Mondal & Ors.

For the Appellants : **Mr. Partha Pratim Roy,
Ms. Poulomi Chakraborty.**

For the Respondents : **Mr. Dilip Kumar Maity.**

Delivered on : **23.12.2024**

Prasenjit Biswas, J:-

1. The instant appeal has been preferred by the appellants challenging the concurrent findings of the Courts below.

2. The predecessor of the respondents (herein) as plaintiff instituted a suit for declaration of his right title and interest over the suit property and for recovery of khas possession of the same against the defendants before the learned Trial Court being Title Suit No. 93 of 1991.

3. One Houstullah Munsu was the original owner of the suit property and his name was duly recorded in C.S.R.O.R. as well as R.S.R.O.R. The said Houstullah Munsu expired leaving behind one son and two daughters as his heirs/legal representatives. Thereafter the son of the said Houstullah Munsu expired leaving behind his four sons and one daughter as his heirs who inherited the share of the said son and during their possession they along with the two daughters of the said Houstullah Munsu sold out the case property along with other non-suit plots to Netai Mondal , the predecessor-in-interest of the present plaintiffs by dint of registered deed being no. 8501/1975 and delivered possession to him. As the defendants/ appellants started to create disturbance in the peaceful enjoyment and possession of the said Netai Mondal, he instituted a suit for declaration and injunction being T.S. No. 213/1975 before the learned Trial Court at Jangipur, Murshidabad against the original defendants but as there was some formal defects in the suit the same was withdrawn by the said plaintiffs with a liberty to file afresh. Subsequently, a suit being T.S. No. 105/1976 was instituted by the said Netai Mondal and after contested hearing, the learned Trial Court dismissed the said suit. Being aggrieved and dissatisfied with the said judgment and decree passed in connection with T.S. No. 105 of 1976 the said Netai Mondal preferred an

appeal being T.A. No. 175 of 1981 before the First Appellate Court and the same was allowed by the Court upholding the title and possession of the said Netai Mondal in respect of the suit property and the defendants/appellants were permanently restrained from interfering with the peaceful possession of the plaintiffs over there.

4. The matter was travelled to this Court by filing a second appeal challenging the judgment and decree passed in Title Suit No. 175/1981 but the judgment and decree passed by the First Appellate Court was affirmed by this Court.

5. There was another suit which was instituted by the defendants/appellants against the said Netai Mondal being Title Suit No. 153 of 1986 and the same was dismissed by the Trial Court as being barred by *resjudicata* and the said judgment and order passed by the Trial Court was also affirmed by this Court in second appeal. So, the title and possession of the predecessor-in-interest of the plaintiffs/respondents was established in respect of the suit property. The said Netai Mondal transferred his entire share in the suit property in favour of the present respondents/plaintiffs by dint of registered deed of Gift being no. 11/1985 and delivered possession to them.

6. It is further averred by the respondents/plaintiffs that although the present appellants have no right, title and interest over the property in question but they repeatedly tried to disturb the peaceful possession of the plaintiffs/respondents and as such a proceeding was initiated under Section 144 of the Code of Criminal Procedure and in that proceeding concerned B.L

and L.R.O was appointed as a receiver but subsequently the said matter was disposed of after expiration of the statutory period as provided in the Act. It has further been stated by the plaintiffs that these appellants again started creating disturbance and as such the matter was brought to the notice of the concerned S.D.O and during pendency of the application these respondents/plaintiffs were forcefully dispossessed from the suit property on 02.01.1991 by the present appellants. Thereafter, the suit was instituted on behalf of the plaintiffs being Title Suit No. 93 of 1991 praying for declaration of their right, title and interest over the suit property as well as for recovery of possession in respect of the case property. The defendants entered appearance in the suit instituted before the Trial Court and filed written statement denying the case of the plaintiffs.

7. It is said by the defendants that Houstullah Munsif was the original owner of the suit property but during his life time he mortgaged the suit property in favour of one Tarinicharan Das which was subsequently foreclosed by the son of Tarinicharan namely Jogindranath Das vide Title Suit No. 64/1926. The said Jogindranath Das sold the suit property in favour of Aswini and Bhajahari and on mutual settlement in between them the suit property fell in the part of Aswini who subsequently, sold the same in favour of Achinta and Mohabir. Achinta and Mohabir subsequently sold the property in favour of the original defendants of the Title Suit No. 92/1991. The defendants denied the right, title and interest of the vendors of the plaintiffs. As such the present

plaintiffs/respondents have/had no right, title, interest and possession in respect of the suit property.

8. There were several litigations between both the sides as well as their predecessor-in-interest. Nobody denies to those litigations which were instituted by both the parties. These plaintiffs/respondents are claiming the properties from one Netai Mondal who transferred his share in respect of the case property in favour of the plaintiffs by registered deed of Gift and gave them possession. As the said Netai Mondal faced obstructions in enjoyment of his right, title, interest and possession over the suit property he instituted a Title Suit being No. 213/1975 before the Trial Court which was withdrawn with a liberty to file afresh a suit and subsequently, suit being no. 105/1976 was filed by the predecessor-in-interest of the present plaintiffs. Although the said suit instituted by the Netai Mondal was dismissed on merit but subsequently, it was travelled to the Appellate Courts. The First Appellate Court set aside the judgment and decree passed by the Trial Court and thereafter in the second appeal the judgment and decree passed by the First Appellate Court was affirmed by this Court. So, it is clear that the right, title, interest and possession of the donor of the plaintiffs/respondents was affirmed by this Court. On the other hand, the suit which was instituted by the original defendants being Title Suit No. 153/1986 against the plaintiffs claiming their right, title and interest over the self-same property was dismissed by the learned Trial Court and the said order of dismissal was affirmed by the First

Appellate Court as well as by this Court in the second appeal being No. SAT 3153 of 1991.

9. As the plaintiffs/respondents were dispossessed on 02.01.1991 by these appellants the present suit was instituted at the behest of the appellants/respondents with a prayer for declaration of right, title and interest as well as recovery of possession in respect of the case property before the Trial Court. In the said suit the present appellants as defendants again raised the similar question regarding right, title and interest of the predecessor-in-interest of the plaintiffs over the suit property although the right, title and interest of the donor of the plaintiffs had been established by the Courts which we have stated in the earlier paragraphs. The deed by which the plaintiffs became the owner of the case property was never challenged by the defendants and aforesaid deed is still in force without any challenge on the part of the appellants. Moreover, the right, title and interest of the donor of the plaintiffs have already been established by the Courts. In previous litigation instituted by the predecessor of the plaintiffs his right, title, interest and possession was established and the defendants were restrained permanently from interfering with the peaceful possession of the plaintiffs. It appears that the predecessor-in-interest of the plaintiffs were in possession and after transferring the suit property by him in favour of the plaintiffs possession was also delivered in favor of the present respondents/plaintiffs.

10. When in earlier round of litigation in between the rival parties as well as their predecessor-in-interest the right, title, interest and possession was

declared and affirmed in favour of the predecessor-in-interest of the plaintiffs as well as the present plaintiffs, the defendants/present appellants cannot raise the similar question regarding right, title and interest of the plaintiff's predecessor over the suit property. The claim of the defendants had already been rejected by the Courts and as such the same point of defense cannot be entertained. The instant suit was instituted at the behest of the plaintiffs as the defendants/appellants dispossessed them although these appellants/defendants had no right, title and interest over the suit property as has already been decided by the Courts.

11. It appears that the defendants/appellants have totally failed to refute the case of the plaintiffs or to establish their own case and the entire case of the defendants/ appellants have found to be no foundation at all. The right, title, interest and possession of predecessor-in-interest plaintiffs/respondents (herein) have already been established by the court where as the defendants/ appellants failed to produce any documents to show that they have a case in respect of the suit property. The submission as advanced at the behest of the appellants is found to be baseless and no legs to stand upon under the eye of law and the claim of these appellants is unjustified and nothing is remained to be adjudicated by the Court.

12. We, thus, do not find any merit in the instant appeal nor involvement of any substantial question of law. Accordingly, the appeal is dismissed.

13. There shall, however, be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)