

20.09.2024
Court No.13
Item No.34
sp

FAT 451 of 2017
With
CAN 1 of 2017 (Old No: CAN 9067 of 2017)
With
CAN 2 of 2024
Kalpana Saha (Sarkar) & Ors.
Vs.
Sukumar Karmakar

Mr. Subir Banerjee
Mr. Anupam Ghosh

...For the Appellants.

Mr. Biswajit Tiwari

...for the respondent

1. Costs as directed in this Court's order dated 9th September, 2024, have been paid. The evidence in this regard is kept on record.

2. The instant appeal is directed against the judgment and order dated 30th June, 2017 passed by the learned Civil Judge (Senior Division) at Malda in O.C. No. 440 of 2012.

3. The facts of the case in brief are that the respondent/plaintiff purchased the suit property from one Dr. Nabarun Chatterjee by a registered deed of conveyance dated 22nd November, 2010. The respondent/plaintiff entered into possession of the property but was obstructed by the appellant/defendant in the suit. The plaintiff lodged a complaint with the local police. He thereafter filed O.C. No. 440 of 2012, seeking declaration that he has right, title and interest over the suit property. He also sought recovery of khas possession and costs.

4. In the written statement, the appellant/defendant stated that she was living with the said Dr. Nabarun Chatterjee as his wife and had a female child. It is with a

view to avoid paying maintenance to the appellant and take her responsibility that the said Dr. Nabarun Chatterjee sold the property to the respondent/plaintiff at a throw away price.

5. The appellant further stated that the sale of the property was in collusion between Dr. Nabarun Chatterjee and the respondent/plaintiff. Based on the pleadings, the Court below framed the following issues,

ISSUES FOR CONSIDERATION:

Considering the pleadings of the parties the following issues were framed by this Court for proper and effective adjudication of the suit:-

1. Is this suit maintainable in its present form and law?
 2. Has the plaintiff any cause of action to file this suit?
 3. Is the suit barred by limitation?
 4. Is the suit barred by mis-joinder and non-joinder of parties?
 5. Is the suit barred by principle of waiver, estoppels and acquiescence?
 6. Is the suit maintainable for want of proper Court fees?
 7. Is the plaintiff entitled to get the decree as prayed for?
 8. To what other relief or reliefs, if any, is the plaintiff entitled to get?
6. The respondent/plaintiff and the said Dr. Nabarun Chatterjee deposed evidence in the suit. The appellant produced three witnesses. The Court below found based on the evidence on record that the appellant could not demonstrate any documents of marriage between herself and the said Dr. Nabarun Chatterjee. While it was contended that the suit was bad for non-joinder of parties no effective argument was made in support thereof.
7. The Court did not find that the suit is bad for non-joinder of party. It was found that the suit was maintainable and not barred by the principle of waiver, acquisition and estoppel. The Court below found that the appellant was working as a cook under Dr. Nabarun Chatterjee and forcefully inducted her mother, brothers and sisters into the same. The Court below also found

that the appellant was in forceful occupation of the said property.

8. It appears to this Court that the appellant had not raised any claim towards maintenance or under the PW D.V. Act 2005 against her alleged husband, Dr. Nabarun Chatterjee. She has also not been able to demonstrate any lawful relationship within. The appellant appears to have tried to trap the said Dr. Nabarun Chatterjee and has attempted to have grabbed his property. The sale by Dr. Nabarun Chatterjee in favour of the respondent/plaintiff, could not be faulted. The respondent/plaintiff was able to demonstrate unlawful resistance and illegal occupation of the property by the appellant and her family.

9. Having regard to the findings of fact, this Court is of the view that the appellant has not been able to make out any case either on fact or law to continue to reside in the premises in question.

10. The argument raised by the learned counsel for the appellant of non-compliance of Section 55(1)(f) and 54 of the Transfer of Property Act, 1882, cannot be raised in the proceeding of this nature. Such issues are those which arise between a buyer and seller.

11. In view of the above circumstances, this Court is of the view that the impugned judgment calls for no interference whatsoever. The judgment is upheld.

12. FAT 451 of 2017 shall stand dismissed.

13. In view of the above, CAN 1 of 2017 and CAN 2 of 2024 shall stand disposed of.

14. There shall be no order as to costs.

15. Let the T.C.R. be returned, if any, to the Court below.

16. The registry shall communicate a copy of this order to the Court below.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)