

AD-37
Ct No.16
16.12.2024
TN

SAT 534 of 2015

Mani Sankar Mahanta and another
Vs.
Sri Gopal Tewari and others

Mr. Amitava Mukherjee,
Ms. Arpita Saha

....for the appellants

1. Learned senior counsel appearing for the appellants hands over original certified copies of the impugned judgment and decree of the trial court. Those are kept on record and be treated as a part of the record.
2. Accordingly, the only subsisting defect in the matter is deemed to stand cured.
3. The second appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.
4. The present second appeal has been preferred against a judgment of affirmance whereby both the courts, that is, the trial court and the first appellate court have returned concurrent findings as to the plaintiff/respondents having title to the suit property and regarding the defendant/appellants having encroached upon a portion of the suit property comprised of plot no.235.
5. Learned senior counsel for the appellants argues that the courts below failed to take into consideration the specific finding in the Commissioner's report to the

effect that there was the existence of very old mud-walled straw-thatched “do chala” residential house, where the defendants live with their families, on the suit plot. It is contended that the evidence on record should have been appreciated in proper perspective to hold that the defendants and their predecessors-in-interest are also in possession of the property since their grandfather’s time.

6. Learned senior counsel argues that one B.L.&L.R.O. report was exhibited by the defendants/appellants which records that the defendants were in possession of the property since the time of their grandfather.
7. We find, however, that the trial court extensively considered the entire evidence on record and came to the conclusion that Exhibits-1 to 3 and Exhibit-6 clearly showed that the suit property originally belonged to the Midnapore Zamindari Company which settled the property in the name of one Ramprakash Tiwari, the grandfather of the plaintiff, who was a settled raiyat in such land. The entire genealogical lineage thereafter, from Ramprakash Tiwari through Nilmohan Tiwari, the father of the plaintiff, to the plaintiff has also been narrated in the trial court’s judgment. Moreover, the learned Trial Judge held that lastly the land passed on to Gopal Tiwari, the instant plaintiff, and that Exhibit-6, the certified copy of the finally published LR Records-of-

Rights, clearly reflected the name of the plaintiff as the sole possessor of the entire 13 decimals of land in the suit plot.

8. On the premise of the same, the learned Trial Judge came to the conclusion that title follows possession and the plaintiffs have title and possession in respect of the suit property.
9. The learned Trial Judge further observed that D.W.1 clearly admitted in his cross-examination that he had no landed or homestead property in the suit plot no.235. It was also recorded by the learned Trial Judge that D.W.2 made a single statement about the possession of the defendants in the suit land and D.W.3 admitted his inability to say anything about the instant dispute.
10. As such, the learned Trial Judge painstakingly adverted to the evidence on record and came to the conclusion that as opposed to the plaintiffs, who have proved their case by cogent evidence, both oral and documentary, the defendants utterly failed to prove their title in respect of the encroached portion in plot no.235.
11. The mention in the Commissioner's report of the existence of a "very old mud walled straw thatched" structure does not prove automatically that the defendants were in occupation of the property for three generations. A mud-walled and straw-thatched

structure, which is by its very nature a temporary structure, can at best be as old as the previous monsoons, unless properly maintained. The expression “very old” has to be taken in proper context. The said expression, if applied to a concrete dilapidated building, would definitely lend some permanence to the age of the said building whereas application of the same phrase to a mud-walled and straw-thatched structure does not necessarily mean permanence through three generations.

12. Hence, without any attempt by the defendants/appellants to ascertain the age of the structure, it cannot be said that the defendants established in any manner their case of possessory title through three generations.
13. In fact, the reliance on the B.L.&L.R.O report is also misplaced. The B.L.&L.R.O, on spot inspection, cannot conceivably ascertain as to how long the persons in occupation of a particular land have been in such possession. Such a visual inspection can only reveal the current state of affairs and the B.L.&L.R.O is not an astrologer that he would ascertain the length of period for which the possessors have been occupying the land. As such, even minimum reliance cannot be placed on such report.

14. The learned Appellate Judge has gone through the entire findings of the learned Trial Judge and has returned concurrent findings of fact.
15. Hence, we do not find any reason to interfere. We do not also find any question of law involved in the appeal, let alone any substantial question of law.
16. Accordingly, SAT 534 of 2015 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequently, CAN 6963 of 2016 stands dismissed as well, treating the same to be in the day's list.
17. The copy of the Commissioner's report handed over in court today be kept on record.
18. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)