

05.09.2024.
Item No. 18.
Court No. 13
sp

**S.A.T. No. 257 of 2023
With
I.A. No. CAN 1 of 2024
(Assigned)**

**Dhuku Mondal & Ors.
Versus
Sri Sri Guru Gouranga Gandharbika Giridhari Jew
represented by Acharya & General Secretary,
Bhakti Prajnan Yati Maharaj of Sri Chaitanya Math,
Mayapur**

Mr. Kumar Jyoti Tewari,
Mr. Younush Mondal,
Mr. Amrit Sinha,
Mr. Aniruddha Tewari.

...For the appellants.

Mr. Pradip Kumar Dutta,
Mr. Chanchal Kumar Dutta

..for the respondent

1. The second appeal has come up for admission against the judgment dated 2nd December, 2023 passed by the Additional District Judge, Nabadwip, Nadia in Title Appeal No. 4 of 2023.

2. By the said judgment, the decision of the first Court dated 23rd December, 2022 in T.S. No. 164 of 2011 passed by the learned Civil Judge (Jr. Division), Nabadwip, Nadia, was set aside.

3. This Court finds that both the Courts below appear to have been ad idem on the facts. The Appellate Court, however, arrears to have applied the facts correctly in reversing the findings of the first Court.

4. The facts of the case are that the suit was filed by the respondent, a Debuttar Trust. The trust was settled by a Zaminder late Bimala Prasad Dutta. The dispute was in connection with Plot No. 58 under R.S. Khatian No. 1262 within Mouza 14 Ballaldighi.

5. The undisputed facts recorded by the two Courts below are that the said plot including several other adjoining plots stood in the name of the father of Late Bimala Prasad Dutta. They were given in cultivation under a share cropping arrangement. The Zamindar was to receive a share of the cultivated crop. The cultivators failed to deliver the landlord's share of the crop. By a deed of settlement, the plots were recovered from the possession of the cultivators and taken back by the father of Bimala Prasad Dutta.

6. It is stated that Bimala Prasad Dutta died sometime in the year 1937. He had executed a Will on 18th May, 2023 which came to be probated before this Court on 9th April, 1940. The name of the Deity came to be recorded in the RoR for long until 2007.

7. Sometime during the said year the shebait of the Trust came to know that the appellants had illegally obtained deletion of the names of the deity and had incorporated their names in the RoR in respect of the said Plot No. 58

8. Proceedings came to be lodged by the successors of Bimala Prasad Dutta before the LRTT Mutation Case No. 114 of 2006 under the West Bengal Land Reforms

Act, 1955 for restoring the name of the deity in respect of the subject suit plot being No. 58 under R.S. Khatian No. 1262.

9. The proceedings were carried to the appellate authority under Section 54 of the Act of 1955. The appellate authority, appointed three persons to survey the property and based on the survey report, held that the property was and always remained with Bimala Prasad Dutta and directed restoration of the name of the deity in respect of the Plot No. 58, subject to any decision of a Civil Court.

10. The subject suit was filed thereafter by the respondent/plaintiff against the appellant/defendant. In fact, the extract of the ROR presented before this Court by the learned counsel for the appellants clearly indicates that the name of the deity remained in the ROR records until it was crossed over and removed in the year 2007.

11. The defendants claimed in the written statement and led evidence, as found by the two Courts below that their father Sukur Mohammad Mondal had received the property in settlement executed by one Binod Mohan Das, alleged authorized agent of Bimala Prasad Dutta. The said Binod Mohan Das is stated to have executed an Amalnama with Dakhila (settlement with possession) sometime in the year 1952.

12. The Lower Appellate Court has rightly found that Bimala Prasad Dutta died on 01.01.1937. Since thereafter, the authority of the agent Binod Mohan Das comes to an automatically comes to an end. The said Binod Mohan Das, therefore, could not have executed the “Amalnama” with Dakhila or otherwise in favour of Late Sukur Mohammad Mondal.

13. The two Courts below also found that the defendants themselves have admitted the title of the Bimala Prasad Das. The Lower Appellate Court additionally found that the Hebanama based on which the defendants claimed to have received the property from their father does not mention any Amalnama as claimed by the appellants.

14. The defendant no. 1 admitted in course of cross-examination that the mutation was effected in the name of the father Sukur Mohammad Mondal only in the year 2006. The mutation of the year 2006 was what was found doubtful by the LRTT in case no. 114 of 2006 and the appeal carried therefrom, under the Act of 1955. It is based on this doubt that the appellate authority ordered restoration of the RoR in favour of the deity.

15. In addition to the above, following the principle of the “title following possession” the right of the deity in respect of plot No. 58, has been rightly upheld by the Lower Appellate Court following the judgment of

the Supreme Court in the case of ***M. Siddiq Vs. Mahant Suresh Das*** reported in ***(2020) 1 SCC 1***.

16. Having regard to the fact and circumstances of the case and the findings of the Lower Appellate Court, this Court does not find any substantial question of law involved for the purpose of admission of the instant second appeal.

17. Hence, SAT 257 of 2023 shall stand dismissed.

18. In view of the above, CAN 1 of 2024 shall also stand dismissed.

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

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)