

AD -22
Ct No.10
14.07.2025
(SSS)

SAT 54 of 2025
With
CAN 1 of 2025

Sarifuddin Mondal and Anr.

Vs.

Amjad Ali Biswas and Ors.

Mr. S. N. Biswas

.....For the defendants/appellants.

Mr. Kaushik Dey,
Mr. Prabir Adhya,
Ms. Madhumanti Chakraborty

.....For the respondents.

1. Affidavit of service filed today be kept on record.
2. Leave is granted to the learned Advocate-on-Record for the appellants to rectify the name of respondent no. 3(E) as well as to delete the superfluous date of the Trial Court's decree from the preamble of the memorandum of appeal. Such correction shall be carried out during the course of the day. The appeal is now taken up for hearing under Order XLI Rule 11 of the Code of Civil Procedure.

3. Learned Advocate for the appellants assails the judgment of affirmance on three grounds. First, that the suit property is a part of an undemarcated whole. As such, exclusive title of the plaintiffs/respondents over specific portions could not have been declared. Secondly, the predecessor-in-interest of the vendors, namely one Kedarnath, having lesser title than transferred to the plaintiffs, the said transfer could not have been valid in the eye of law. Thirdly, it is argued that the exclusive possession of the plaintiffs in respect of the suit property has not been established by evidence.

4. On a careful consideration of the judgments of the courts below, we find that the purported conundrum as to Kedarnath having transferred more than he had, has been resolved by the appellate court by observing that Kedarnath had obtained 83 decimals of land in plot no. 2001 and transferred 123 decimals of land in respect of plot no. 2001/5795, which ultimately culminated in the defendants transferring the suit properties in favour of the plaintiffs.

5. The first appellate court further found, upon careful scrutiny of Exhibit 9, that plot no. 2001, in which Kedarnath had 83 decimals and *bata* plot no. 2001/5795, in which he sold 123 decimals, are two different plots. Hence, there is no conflict between the acquisition of Kedarnath of 83 decimals in plot no.

2001 and his transferring 123 decimals in bata plot no. 2001/5795, which are completely different plots as per the factual findings arrived at by the courts below.

6. Also, the courts below relied on the narrative of the devolution of title as mentioned in the transfer deeds executed by the defendants themselves while arriving at their respective conclusions that the suit property has been demarcated and separated and pertains to distinct and different plots.

7. Furthermore, DW1, in his evidence, admitted the possession of the plaintiffs in respect of the suit plots. Proceeding on such admission, the courts below found that since the suit properties are demarcated ones and the possession of the plaintiffs in respect of the same has been admitted by the defendants, there could not be any impediment in declaring the title and exclusive possession of the plaintiffs in respect of the suit plots.

8. Hence, none of the three questions raised by the appellants deserve due consideration, since both the courts below have arrived at concurrent findings of fact upon an appreciation of evidence. A re-appreciation of evidence, particularly since only questions of fact are involved, is not within the domain of the second appellate court.

9. We do not find any patent perversity committed by any of the courts below and/or any question of

law, far less substantial question of law, being involved in the appeal.

10. Accordingly, SAT 54 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

11. Consequentially, CAN 1 of 2025 is also dismissed.

12. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)