

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

SAT 34 of 2024

With

CAN 1 of 2024

(ASSIGNED)

Sushama Rani Das & Anr.

Vs.

Rabindra Nath Das & Ors.

For the Appellants : Mr. Kishore Mukherjee
Mr. Soumyajit Mukherjee
Mr. Ahitagni Dey

Judgement Delivered On : 07.04.2025

Supratim Bhattacharya, J.:

1. Both the Trial Court as well as the First Appellate court has declined the relief claimed by the petitioner as regards to the correction of the three sale deeds alleged to have been executed on 19.04.1971, 09.05.1973 and 19.09.1975. It is the plaintiff's claim that Dag No. 1832 has wrongly been mentioned in these three sale deeds said to have been executed by Haripada Das. According to the plaintiffs the Dag No. 1832 has wrongly been mentioned in place of 1838 therefore they sought for declaration of title in respect of Dag No. 1838 of Schedule A property in the plaint. They also sought for a decree rectifying the three sale deeds being No. 3282 of 19.04.1971, 4848 dated 09.05.1973 and 6126 of

19.09.1975. The brief factual background is that Haripada Das was the original owner of undivided half share in respect of the property being plot No. 1838 situated at Mouja Harembagopalpur JL NO. 195. According to the plaintiff Haripada died intestate leaving behind his wife and one son, defendant No. 1, he also left behind three daughters. Santibala Das the wife of Haripada Das also died intestate, one of the daughters Renukabala Das died leaving behind her husband and three daughters, defendant Nos. 4 to 9. Another daughter namely Sitarani died intestate leaving behind her only son Swapan Kumar Das (defendant No.2).

- 2.** Shibprasad Das and Haripada Das were the undivided joint owners in respect of the plot No. 1838 and it is claimed by the plaintiffs that Haripada Das transferred 33 decimal from this land through the registered instruments wherein the Dag number has wrongly been described as 1832 instead of 1838. According to the plaintiffs Haripada Das during his lifetime has thus transferred his 50% share in respect of the land in favour of the plaintiffs.
- 3.** Insofar as the remaining 50% of the land is concerned it is their case that the same has been partitioned by Sibaprasad Das amongst his legal heirs including the plaintiffs in the year 1978 by a partition deed dated 01.05.1978 bearing deed No. 4598. Since Haripada Das was not the owner of RS plot No.1832 there was no question of him transferring any land bearing Dag No. 1832, in

fact Haripada Das was owner of the remaining 50% share of the land in plot No. 1838 and it is this land which he has sold to the plaintiffs by the three sale deeds.

4. The plaintiffs have claimed that a wrong Dag No. has been mentioned in the three sale deeds which is a mutual mistake. According to the plaintiffs at the time of KB operation stage (preparation of Porcha/ Record of rights) they had approached the Revenue Officer requesting for correction of the mutual mistake. They have also claimed that the defendant No. 1, son of Haripada Das had also moved before the Block Land and Land Reforms Officer and had initiated the proceedings bearing Miscellaneous petition No. 310 of 2015 for rectification of this error. It is the case of the plaintiffs that the defendants with the help of miscreants made attempts to dispossess the plaintiffs from the suit land bearing RS Dag No. 1838 which compelled them to initiate proceeding under Section 144 Cr.P.C. before the S.D.M. at Kakdwip, South-24-Parganas by filing MP case No. 598 of 2018, wherein order for maintenance of peace was passed. The plaintiff alleged that the cause of action arose when the defendants refused to settle the dispute and on 01.07.2018 they tried to dispossess the plaintiffs.
5. The defendants on the other hand before the Trial Court, have denied the existence of the three sale deeds sought to be rectified

by the plaintiffs they have raised an issue regarding maintainability of the suit. It is the case of the defendants that based on a family settlement among the legal heirs and successors of Haripada, defendant is the possessor of the suit land which stands recorded in the name of the defendant No. 1 for which he is paying revenue to the Government. They denied having lodged any case before the BL & LRO vide Misc. Case No. 310 of 2015 and before the Ld. S.D.M. Kakdwip. In this factual background the Trial Court proceeded to consider the case of the parties. Eight issues were framed by the Trial Court which are as follows:

“1. Is the suit is maintainable in its present form and law?

2. Whether the plaintiff has any valid cause of action for filing the present suit ?

3. Whether the suit is barred by limitation or Sec. 34 of Specific Relief

Act or any other provision / provisions for the time being in force in any law or laws?

4. Is the suit barred by principle of estoppel, waiver and acquiescence?

5. Whether the plaintiff has any right, title, interest and possession over the suit property?

6. Whether the suit is bad for defect of parties?

7. Whether the plaintiff is entitled to get decree as prayed for?

8. To what other relief /reliefs is the plaintiff entitled to get?”

- 6.** Insofar as the cause of action claimed by the plaintiffs on 26.06.2018 and 01.07.2018 when it is alleged that there was refusal to settle the dispute and when the defendant has allegedly tried to dispossess the plaintiff respectively. The Trial Court has accorded a thorough consideration to the rival submissions on these grounds. It has taken note of the fact that no evidence has been adduced that there was refusal to settle the issue or as to when the defendants have tried to dispossess the plaintiff showing the record of rights. The Trial Court has in fact recorded admission of the plaintiff that the record of rights stands in the name of the defendants.
- 7.** The Trial Court has also considered the case of the plaintiffs that the partition took place prior thereto i.e. in the year 1978. The Trial Court has further considered the averments made in Paragraph 13 of the plaint that at the KB operations stage the plaintiffs and defendants had visited the Revenue Officer for correction of the plot numbers. The KB operation started prior to the year 1980, therefore, the Trial Court has proceeded to record a finding regarding the alleged mutual mistake having been discovered by the plaintiffs at least prior to 1980.

- 8.** During the cross-examination, PW1 has stated before the Trial court that he had approached the vendor (Haripada Das) to rectify the error in the sale deeds, in 1978. The Trial Court has thus disbelieved or refused the case of the plaintiffs that the cause of action arose when the defendants refused to settle the issue or tried to dispossess them in June-July, 2018. The Trial Court has thus held that the plaintiffs slept over their rights for forty years that is in between 1978 to 2018 when they finally filed the suit having regard to the provisions contained in Article 113 of the Limitation Act prescribed in the period of limitation as three years from the time when the right to sue accrues. The Trial Court has held the suit to be barred by limitation. While recording the findings, the Trial Court has also taken note of the fact that the plaintiffs are qualified and educated persons.
- 9.** From the judgment of the Trial Court it is further apparent that at the beginning there were nine defendants in the suit, subsequently by filing a petition on 13.09.2019 they had sought for expunging of defendants No. 7 to 9 without any reason whatsoever. The Trial Court has thus further taken note of the fact that the plaintiff is not sure of the relief claimed.
- 10.** The Trial Court has further taken note of the evidence of PW1 that the vendor (Haripada Das) was alive for 15 to 16 years after the year 1978. However there was no effort taken for

rectification of the deeds between the vendor and vendee during the lifetime of the vendor which was for a considerably long period. The genuineness of the deeds have also been doubted by the courts since PW1, husband of the plaintiff No. 1 and the Plaintiff No. 2 stated in cross-examination that neither plaintiff nor PW1 were present at the time of registration and execution of the deed. From the cross-examination of the PW1 the Trial Court has further recorded that the deeds have been registered in the year 1971, 1973 and 1975 and the same were not in custody of either the plaintiff or the PW1 and that they got the three deeds in the year 1978. The primary issue on which the Trial Court has rejected the suit is the issue of long and unexplained delay. The above noted facts recorded by the Trial Court in its judgment are founded on the evidence and records before the Trial Court, the said findings have been affirmed by the First Appellate Court. The findings of facts recorded above are therefore conclusive between the parties in the two proceedings.

- 11.** Before this Court in the Second Appeal we are required to see whether any substantial question of law arises for consideration. We find that the Court's findings regarding the cause of action having arisen in 1978 is founded on records and materials before the Court. It is no doubt that the suit has been filed after 40 years in the year 2018 since the plaintiffs have

averred in the plaint and in their evidence that they had made attempts to rectify the mistake during the KB operations, that is before the year 1980.

- 12.** The Trial Court has also proceeded to consider that the sale deeds i.e. Exhibit Nos. 3, 4 and 5 based on which the plaintiffs claimed to have acquired right, title and interest in the deeds of plot number 1838 cannot be made the basis of any such declaration since the same was never rectified. We find no infirmity in such findings as it is based on the plaintiffs own case that the sale deeds did not contain even mention of plot number 1838. The Trial Court has also taken note of the fact that the defendants' name was allotted in the L.R. Khatian at the time of filing of the suit. The First Appellate Court has also taken into consideration that the predecessors of the plaintiffs and defendants are co-owners of the joint property and that Jitendra Nath Das, Jatindranath Das, Haripada Das and Satish Das are the co-owners. There was a partition on 10.05.1978 between the co-owners of the suit plot. However the plaintiffs were not parties to the partition, though they claim to have purchased the plot No. 1838 much prior thereto, i.e. by virtue of their sale deeds executed in 1971, 1973 and 1975 by Haripada Das. The plaintiffs have also not taken any steps for rectification of the partition deed, though they were having knowledge of the same.

13. Insofar as the reliance of Article 113 is concerned, the Ld. Counsel for the appellant has submitted that the same would not apply to the fact of the present case since the error in the deeds is a mutual mistake. The said submission has been rejected by both the Trial Court and the First Appellate Court based on the findings that since the prayer for rectification of the deeds would be a suit filed under Article 113 of the Limitation Act, the plaintiff was required to institute the suit within the period of limitation of three years from the time right to sue accrued. Since the plaintiffs themselves have claimed that they had made endeavours for rectification before 1980 the Trial Court and the First Appellate Court has rightly taken the view that the right to sue accrued prior to the year 1980.

14. Insofar as the claim regarding mutual mistake there was no question of the Trial Court taking the same into consideration in favour of the plaintiffs for the simple reason that a mistake can be said to be mutual when it is agreed between the parties to the contract wherein the mistake occurs. The Dag number has been recorded as noted above during the lifetime of the vendor and nearly 15 to 16 years prior to his expiry. No such alleged mistake was brought before any court, seeking its rectification. Insofar as the legal heirs of the vendor are concerned they have denied the existence of the sale deeds altogether let alone recognized any

mistake therein. The Trial Court therefore had no basis whatsoever to accept the submissions of their being any mutual mistake in the three sale deeds.

15. We thus find no reason to interfere with the judgment of the Trial Court and the First Appellate Court.

16. The instant appeal does not involve any substantial question of law, the appeal being No. **SAT 34 of 2024** with its connected application being **CAN 1 of 2024** are **dismissed**.

17. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

18. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)