

Item-
4. 12-08-2025

SAT 250 of 2010

sg Ct. 16

Sunil Mardy alias Mardi & Ors.
Versus
Jamfal Village Masjid & Ors.

1. The appellants are not represented. This appeal has come up for admission. The appeal was filed on 24th June, 2010 and is defective. No attempt has been made to remove the defects since the filing of the appeal.
2. The appeal is directed against the judgment and decree dated 8th March, 2010 passed by the learned Additional District Judge, 2nd Court, Malda in O.C. Appeal No. 10 of 1996 affirming the order dated 12th September, 1995 passed by Learned Munsif, 2nd Court, Malda in O.C. Case No. 99 of 1984.
3. The subject matter of the suit is the plot is plot no. 285 which consisting of 2.18 acres area as described in the ka scheduled to the plaint. It originally belongs to Sree sree Radha Ballav Jew Thakur. The plaintiff alleged that the defendant no.4, the predecessor of the plaintiff took a settlement of 94 decimals in the aforesaid plot as described as kha schedule property to the plaint from the shebaitis of the aforesaid deity in the year 1370 B.S. at a yearly rent of Rs.2.75 paise. Ever since the date of settlement, he had been possessing the suit land which was a tank fishery on payment of rent year by year to the landlord. It is alleged that the defendant nos. 1 and 2 are the mutawalis of the mosque how took settlement of 77 decimals in the suit tank and they had also been

possessing the same jointly with the plaintiff predecessor and it was by reason thereof, the plaintiffs filed a suit for declaration of title and permanent injunction restraining the defendants from disturbing the peaceful joint possession of the plaintiffs in the suit tank.

4. The defendant nos. 1 and 2 contested the said suit in the it is contended that the suit plot is a tank commonly known as Taltala Pukur. Its area is 2.18 areas and out of it, .77 are belongs to Bhoispukuria village mosque of which defendant nos. 1 and 2 are mutawalis and they have been possessing the same as such. The name of the mosque is entered in RSROR in respect of 77 decimals land. Apart from this, 47 decimals of land in the suit tank is taken in settlement in 1981 by the defendant no.1 on behalf of the above named mosque from the local Gram Panchayat and the remaining 94 decimals in the tank is possessed adversely by the defendant nos. 1 and 2 having forcefully dispossessed the shebaitees of the deity, namely, Shri Shri RADha Ballav Jew Thakur. Factually it appears that the defendants have been possessing the suit tank entirely by reason of such forceful entry.
5. The Tank Improvement Departments of the Government acquired the suit tank for improvement for 20 years and thereafter the same has been delivered to the defendant nos. 1 and 2 by the said department in the year 1980 after expiry of the term of 20 years. Since then, the defendants have been possessing the suit tank, having exercised their right, title, interest and possession over the suit tank.

6. The learned Trial Court framed 9 issues out of which Issue Nos. 4 and 5 are important for the present purpose. The learned Trial Court on examination of the oral evidence of P.W. 1 and Exhibits 3 and 4 to 4(d) has arrived at a finding that the exhibits are not authenticated documents on the basis of which the father of the plaintiff would not have claimed ownership on the basis of kha schedule tank fishery. The exhibits 3 and 4 to 4(d) do not indicate as to who was the original owner of the kha schedule tank fishery. The plaintiff failed to establish the right in respect of the schedule property.
7. In confirming the said judgment, the learned First Appellate Court has affirmed the order on reappraisal of Exhibit 4 and the rent receipts produced on behalf of the original plaintiff. The learned First Appellate Court was also of the view that those documents have not been properly proved nor the said documents could create any right, title and interest of the plaintiff in the suit property in 1370 BS corresponding to 1964/1965 AD, after the vesting of intermediary interest of the state by virtue of notification under section 4 of the West Bengal Estate Acquisition Act, 1953. The plaintiffs are not entitled to claim any ownership in respect of the property.
8. Moreover, it is only when the owners of the said estate retain their interest in the suit tank under section 6 of the West Bengal Estate Acquisition Act. They could settle the suit tank with the original plaintiff. Exhibit H which is the RSROR as filed during evidence, would show that

the suit tank bearing plot no. 285 comprising of 94 decimals was recorded in khatina no. 1/1 in the name of Radha Ballav Jew Thakur. In view of such entry in RS ROR, it can be presumed that the suit tank was retained and that the deity has the title upon the suit tank to some extent. This title of the deity can be passed in favour of the plaintiffs only by way of recognized modes of transfer such as sale, gift, mortgage, exchange and lease. Here, the claim of the plaintiffs of the suit land was taken in settlement for years together. Moreover, the a settlement of land is a kind of lease and when such settlement extends over years together or is given in perpetuity, the transaction requires compulsorily to be registered in accordance with the provisions of the Transfer of Property Act. It was on such consideration, the learned Appellate Court refused to interfere with the order passed by the learned Trial Court.

9. In view of the aforesaid discussion and having regard to the fact that the learned Trial Court as well as the learned First Appellate Court has on appreciation of evidence both on facts and of law have arrived at a definite findings, we are not inclined to admit this appeal.
10. The appeal is rejected.
11. Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)

