

13th May,
2025
(AK)
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S.A.T 229 of 2024
IA No: CAN 1 of 2024

Sk. Emam Ali and others
Vs.
Sk. Yasin @ Dukha and others

Mr. Srikanta Dutta

...for the appellants.

1. The present second appeal has been preferred against a judgment of affirmance.
2. The plaintiffs/appellants filed a suit for declaration of title and consequential reliefs.
3. Both the courts below dismissed the suit on several grounds.
4. The first one of such grounds was that a civil suit was not maintainable under Section 51 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as 'the 1955 Act').
5. The second ground was that the particulars of fraud have not been pleaded in the plaint.
6. The fraud pleaded, it is relevant to mention here, was regarding the alteration of the records of rights.
7. Thirdly, the court below held that the oral hiba in favour of the defendants/respondents was proved by oral deposition.

8. Fourthly, the trial court held and the appellate court affirmed that the documents of title of the predecessor-in-interest of the plaintiffs were not produced.
9. Learned counsel for the appellants submits that since the principal relief sought in the suit was declaration of title, the ancillary relief of alteration in the records of right, being consequential to the main relief, could not have been a determinant of the bar under Section 51 of the 1955 Act.
10. Furthermore, it is argued that paragraph no.3 of the plaint categorically states the details regarding fraud.
11. It is further argued by the appellants that the finding of the courts below as to the title of the predecessor-in-interest of the plaintiffs/appellants, namely, Sk. Kuchal, having not been proved is mutually destructive with the plea of oral hiba taken by the defendants and upheld by the courts.
12. The oral hiba is premised on the antecedent title of Sk. Kuchal, the common predecessor-in-interest of the parties, and as such the courts, in the same breath, could not have accepted the oral hiba whereas denying the title of the predecessor-in-interest of the plaintiffs.

13. Upon carefully considering the arguments of the appellants, however, we are unable to agree with the contentions of the appellants.
14. Insofar as the bar under Section 51 of the 1955 Act is concerned, we agree with learned counsel for the appellants that a civil court has jurisdiction under Section 9 of the Code of Civil Procedure, 1908 as well as under Section 34 of the Specific Relief Act, 1963 inasmuch as a suit for declaration of title or status vis-à-vis an immovable property is maintainable before a civil court.
15. Since the principal relief sought in the suit was title declaration, merely because there was a consequential relief sought regarding the alteration of the records of right, pursuant to declaration of title, it cannot be said that the appropriate authority under the 1955 Act had exclusive jurisdiction under Section 51 of the 1955 Act, for the simple reason that the said authority does not have jurisdiction in law to determine the title of parties.
16. However, insofar as the ground of fraud is concerned, despite a careful perusal of the plaint, including paragraph no. 3 thereof, we fail to find the particular instances of alleged fraud having been pleaded, thereby vitiating the pleadings for

violation of Order VI Rule 4 of the Code of Civil Procedure.

17. Moreover, although in a stray sentence the learned trial Judge held that the plaintiffs merely produced records of rights and no document of title of the predecessor of the plaintiffs could be produced, in the same breath, the learned trial Judge also observed in a different portion of the judgment that it is mutually admitted between the parties that Sk. Kuchal was the original owner of the suit property and that both sides have tendered the CSROR in respect of the same.
18. Thus, the mere finding that the plaintiffs failed to produce any document of title of Sk. Kuchal does not have any effective bearing on the suit, since even if we proceed on the premise that the title of Sk. Kuchal was admitted, there was no bar to the courts below in dismissing the suit by accepting the oral hiba executed in favour of the defendants.
19. Learned counsel for the appellants contends that the said oral hiba was believed by the courts below only on the basis of the defendants' witnesses' deposition.
20. However, by its very nature, in the absence of any written document, an oral hiba is required primarily to be proved by oral evidence.

21. In any event, a civil suit is decided on the preponderance of probabilities and it is trite law that the appellate court does not reverse the findings of the courts below in the event one of the plausible views is taken by the courts below.
22. In the present case, both the courts below arrived at a concurrent finding that by virtue of oral evidence, the oral hiba in favour of the defendants/respondents has been proved.
23. Thus, we do not find any substantial question of law involved in the appeal and/or anything to instigate us to reverse the concurrent findings of facts of both the courts below.
24. Accordingly, SAT 229 of 2024 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. CAN 1 of 2024 is also disposed of consequentially.
25. There will be no order as to costs.
26. The learned Advocate-on-record for the appellants shall remove the defects in the Memorandum of Appeal during the course of this week.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)