

AD -2
Ct No.10
16.07.2025
(SSS)

SAT 617 of 2013

Monoj Kumar Nandy and Ors.
Vs.
Satya Narayan De & Ors.

Mr. Probal Mukherjee, Ld. Sr. Adv.
Mr. Suhrid Sur, Advs.
...for the appellants.

Mr. Manik Ranjan Karmakar, Adv.
...for the respondents.

1. The present appeal has been preferred against a judgment of affirmance. The plaintiffs/appellants filed the suit for declaration of their title and ancillary reliefs.

2. The plinth of the plaint case for asserting the claim of title to the property by the plaintiffs is three fold:-

(i) On the basis of a previous compromise decree passed in a second appeal, in which the present defendants/respondents were parties as proforma defendants/respondents and the present plaintiffs/appellants and their father were parties as principal defendants/appellants, where the plaintiffs therein had admitted the title of the present plaintiffs;

- (ii) On the strength of a deed of gift executed by Dulal Chandra Nandi, the predecessor-in-interest of the present defendants/respondents, in favour of the plaintiffs/appellants;
- (iii) In the alternative, adverse possession.

3. Both the courts below, in the present *lis*, held that the compromise decree could not *per se* confer any title on the plaintiffs/appellants, since it was not a registered deed of transfer. Insofar as the title deed executed by Dulal Chandra Nandi is concerned, both the courts below came to the concurrent finding that the said issue was barred by *res judicata* between the present plaintiffs and the present defendants, since it was held by the trial court and the first appellate court in the previous suit that the said gift deed did not confer any title on the present plaintiffs, as the vendor himself did not have any title in the said property. The second appeal at the previous instance, it is to be noted, was recorded by the courts below to have been dismissed as against the proforma defendants therein, that is, the present defendants/respondents.

4. In any event, it is an admitted position that the present defendants/respondents, who were proforma defendants in the previous suit, were not signatories to the compromise decree arrived at in the previous second appeal.

5. Learned senior counsel for the appellants argues that under Section 17(2) of the Registration Act, 1908, a decree of a court is not compulsorily registrable unless the decree is a compromise decree pertaining to immovable property other than the subject matter of the suit. In the present case, it is contended that the subject matter of the previous suit is the self-same property as the present suit and was the subject matter of the compromise exclusively, without any other property being incorporated in the said compromise decree. Thus, the premise of the courts below was erroneous insofar as the previous compromise decree did not require any registration in law.

6. Secondly, it is argued that since the present defendants were parties to the previous litigation as proforma defendants, the said compromise decree arrived at in the previous second appeal is binding on them as well. Thus, the title of the plaintiffs/appellants cannot be disputed now by the defendants.

7. Moreover, it is contended that, in any event, on the strength of the registered deed of gift, the plaintiffs/appellants should have been declared to have title in the suit property.

8. Learned senior counsel for the appellants, however, does not press the claim of adverse possession.

9. Upon hearing learned senior counsel, we find that in any event, the plea of adverse possession would be mutually destructive of the other claims of title and as such, could not have been taken by the plaintiffs/appellants in any event. Giving the benefit of doubt to the plaintiffs/appellants to the extent that the plea of adverse possession might have been claimed in the alternative, we proceed to adjudicate on the other two counts on which title has been claimed by the plaintiffs/appellants.

10. There cannot be any manner of doubt to the legal proposition that, in terms of Section 17(2)(vi) of the Registration Act, no decree or order of a court is compulsorily registrable.

11. As such, to operate as a binding decree, the decree passed in the previous second appeal need not have been registered. The question, however, is not whether the said decree is a binding decree between the signatories to the compromise decree, that is, the present plaintiffs/appellants (who were principal defendants in the earlier suit) and the plaintiffs of the earlier suit. The moot question involved here is whether such decree could *per se* operate to confer title on the present plaintiffs. Needless to say, even today, the present plaintiffs/appellants can have the compromise decree passed in the previous second appeal executed as against the plaintiffs in the previous suit, since the compromise decree is very

much binding between the present plaintiffs and the plaintiffs in the previous suit.

12. However, both the courts below in the present instance have come to the finding that the earlier second appeal was dismissed insofar as the proforma defendants therein, that is, the present defendants are concerned.

13. Moreover, it is an admitted position that the present defendants, who were proforma defendants in the previous suit, were not signatories to the previous compromise decree arrived at in the second appeal and, as such, there cannot be any binding effect of such compromise decree on the present defendants vis-à-vis the title of the present plaintiffs/appellants.

14. Thus, although the decree passed in the previous second appeal by way of compromise is a binding decree between the plaintiffs therein and the present plaintiffs, the same does not bind the present defendants.

15. Insofar as the reliance of the plaintiffs/appellants herein on the title deed purportedly executed by Dulal Chandra Nandi is concerned, the said issue, as held by both the courts below, has attained the character of a final adjudication, since the second appellate court at the earlier instance, while passing a decree on compromise, did not in terms set aside the findings of the trial court as well as the first appellate court in

the said case as regards the said Dulal Chandra Nandi not having any title in the property and, as such, the gift deed executed by him in favour of the present plaintiffs/appellants not conferring any title on the present plaintiffs.

16. We agree with the said conclusion of both the courts below to the effect that the issue as to the plaintiffs' claim to title on the strength of Dulal Chandra Nandi's transfer deed has already been finally adjudicated in the previous round of litigation and operates as *res judicata* in the present suit. Thus, the second count on which the plaintiffs/appellants claim title cannot also be allowed to be taken now. Hence, we find that there is no substantial question of law involved and as such, there is no occasion to interfere with the concurrent findings of fact of both the courts below.

17. Accordingly, SAT 617 of 2013 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

18. No order as to costs.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)