

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

SA/413/2000

IA NO: CAN/5/2023, CAN/7/2025

**Fulmala Biswas & Ors
VS**

Biswajit Sarkar & Ors

For the Appellant : Samiran Giri, Adv.

For the Respondent : Haradhan Mondal, Adv.

Heard on : 05.02.2026

Judgment on : 12.02.2026

Sugato Majumdar, J :

The instant second appeal was filed against the judgment and decree dated 30/11/1999 passed by the Learned Asst. District Judge, 1st Court, Krishnanagar, Nadia in the Title Appeal No. 61 of 1998 whereby the said Appellate Court confirmed the judgment and decree of the Trial Court dated 18/05/1998.

At the outset, the rival pleadings of the parties raised in the Trial Court should be considered.

The Complaint case, in nutshell, is as follow:

- a) The property admeasuring 15 decimal in Dag No. 1320, Khatian No. 1009 is the suit property.

- b) The original owners partitioned the property on executing a deed. The property stood in the name of late Ram Gopal Ghosh. His name was in the R.S. Record of Rights.
- c) The said Ram Gopal Ghosh, since deceased, sold the property to one Manmohan Roy and one Gopal Chandra Roy by a registered deed of sale dated 09/10/1956. The said two transferees began to reside therein constructing rooms. They temporarily left the premises leaving therein one Siddheswar Seal as caretaker of the premises.
- d) The Defendants, taking advantage of the absence of the said Manmohan Roy and Gopal Chandra Roy, manufactured a false deed in collusion with the said Siddheswar Seal in respect of certain area land, in their favour. Thereafter, the original Defendants instituted a suit in collusion with the original owners; but the suit was dismissed for default on 12/04/1978.
- e) On death of Manmohan Roy, his son inherited his share in the property and began to use and occupy his share of land, along with Gopal Chandra Roy. Sunil Chandra Roy was the son and legal heir of the said Manmohan Roy. The said Sunil Chandra Roy sold his share of land to Sunil Biswas, Jagabandhu Biswas and Bijay Kumar Byapari in terms of a registered deed of sale dated 17/10/1973. Thereafter, the said Gopal Chandra Roy sold his share of land to the Plaintiffs/Respondents and the pro-forma Defendants who mutated their names in the Record of Rights. This sale was affected in terms of a registered deed dated 21/09/1987. The property is now let out to the tenants.

- f) The original Defendants have no right, title or interest in the suit property. They forcefully occupied the suit property made *pucca* construction and erroneously got their names entered into the Record of Rights.

The suit was filed praying for declaration of title, permanent injunction and mandatory injunction.

The Defendant No. 1 being the present Appellant contested the suit by filing written statement, refuting all the allegations. It was pleaded that the suit is bared by the provision of Section 34 of the Specific Relief Act, 1963, since the Plaintiffs/Respondents are not in possession. The positive case of the Appellant/Defendant No.1 may be summarized as follow:

- i) The suit property belonged to Kalipada Ghosh and Jogendra Nath Ghosh having equal shares. It is false that the tenants made amicable partition of the suit property, as averred, and that late Ram Gopal Ghosh, since deceased, alone possessed the suit property. It was denied that the name of Ram Gopal Ghosh had been mutated or that the property had been sold in favour of Manmohan Roy and Gopal Chandra Roy.
- ii) The suit property was in the name of two brothers Jogendra Nath Ghosh and Kalipada Ghosh. The said Jogendra Nath Ghosh died leaving behind him his only son Gour Gopal Ghosh who inherited 15 decimals of land. Kalipada Ghosh died leaving behind him four sons – Shyam Sundar, Ram Gopal, Radha Gopal and Nitya Gopal.

- iii) The said Gour Gopal sold his shares to the heirs of Kalipada Ghosh, since deceased. The said Shyam Sundar Ghosh died leaving behind him his only son Amresh Ghosh who inherited .04 decimal of land as the four sons of Kalipada Ghosh inherited .04 decimal of land each.
- iv) The said Radhanath Ghosh sold out his share in the land to Nityananda Byapari and Harekrishna Byapari. Ram Gopal Ghosh sold out his share to Manmohan Roy and Gopal Chandra Roy. On the other hand, Amaresh Ghosh and Nitya Gopal Ghosh sold out their respective shares to the Appellant/Defendant No.1 by two registered deeds dated 20/10/1968 and 24/06/1968. Out of this, the Appellant/Defendant No.1 sold his share of land to the father of the Plaintiffs/Respondents.
- v) The Appellant/Defendant No.1 constructed shop room in the remaining sharing land. The Appellant/Defendant No.1 has right, title and interest in the suit premises.

On the basis of rival pleadings, the Trial Court framed the following issues:

1. Is the suit maintainable in the present form?
2. Have the Plaintiffs/Respondents any cause of action to bring the suit?
3. Is the suit hit by Section 34 of the Specific Relief Act, 1963?
4. Have the Plaintiffs/Respondents right, title and interest over the suit property?
5. Are the Plaintiffs/Respondents entitled to get a decree prayed for?

6. To what relief, if any, are the Plaintiffs/Respondents entitled to?

The Trial Court observed and concluded that the Plaintiffs/Respondents have right, title and interest one the suit property and should have a right to recover possession from the unlawful owner by filing a suit. Accordingly, the Trial Court passed decree of declaration that the Plaintiffs/Respondents are the full owner of the suit property and also passed decree of recovery of *khas* possession.

On being aggrieved and dissatisfied, the Appellant/Defendant No.1 preferred appeal. The Appellate Court, in terms of the judgment dated 30/11/1999 affirmed the decree passed by the Trial Court.

Thereafter, the Appellant/ Defendant No.1 preferred the instant appeal.

At the time of admission of the appeal, the Division Bench framed the following substantial questions of law:

1. Whether the Court of appeal below erred in law substantially by holding that the title of the Plaintiffs/Respondents in the suit property on the basis of entries made in the record of rights could not be accepted without making any finding as to whether such entries were erroneous or not, as it now well-settled land that the entries in the record of rights only had presumption and nothing else?
2. Whether the courts below erred in law substantially by decreeing the suit of the Plaintiffs/Respondents without consideration of the R. S. Record of rights being Ext. 'D' and 'D1' which amply supported the case of the Appellant/Defendant No.1?

As stated above, the finding of the Trial Court was that Appellant/Defendant No.1 has right, title and interest of the suit property. In coming to the conclusion the Trial Court considered oral testimonies of the witnesses and the documentary evidences. Ext. 1 was R.S. Record of rights, Khatian no. 1009, Plot no. 1320 in the name of Ram Gopal for 30 decimals of land. Ext. 2 is the rent receipts. Ext. 3 is the deed of sale bearing no. 6064 dated 21/09/1987 executed by Gopal Chandra Roy in favour of Kiran Chandra Sarker, Gopinath Sarkar and Nityananda Byapari in respect of Plot no. 1320 Khatian no. 1009 admeasuring area of 15 decimals out of 30 decimals. The Trial Court also considered deed of sale being Ext. 5 bearing no. 10535 for the year 1956 executed by Ram Gopal Ghosh in favour of Manmohan Roy in respect of Plot no. 1320 Khatian no. 1009 comprising of an area of 15 decimals. Ext. 6 was an e-copy of deed bearing no.10919 dated 17/10/1973 executed by Sunil Chandra Roy son of late Manmohan Roy in favour of Sunil Kumar Biswas and others in respect of Plot no.1320 comprising of an area of 15 decimals. This apart the Trial Court also considered the certified copies of the judgment and Ext. 11 which is R.S. Record of Rights under separate khatian numbers in the name of pro-forma Defendants and the Plaintiffs/Respondents. The Trial Court also considered the documentary evidences adduced by the Appellant/Defendant No. 1, namely, Ext. A being a deed of sale, bearing no.15843 dated 26/10/1968 executed by Amaresh Kumar Ghosh in favour of Prafulla Kumar Ghosh in respect of Plot No.1320 Khatian No.1009; Ext. B which is another sale deed dated 21/06/1968 executed by Nitya Gopal Ghosh in favour of Prafulla Kumar Biswas comprising of an area of 4.5 decimals of land out of total area of 30 decimals of land in Plot no.1320 Khatian no. 1009. The Trial Court also considered Ext. C & Ext. D being record of rights. Considering the documents produced by both the parties, the Trial Court came to the conclusion as aforesaid. The conclusions reached by the Trial Court were not

only based on Record of Rights but on the registered deeds certified copies of the Court orders and others. In other words, the Trial Court traced the genesis of the title of the Respondents/Plaintiffs from various registered deeds along with ROR. Records of rights were considered as corroborating document to the title deeds.

The First Appellate Court considered the appreciation of evidence by the Trial Court. The Appellate Court also considered Ext. F the probative value of which was negated on the basis that the said document did not bear any seal. The conclusion of the Appellate Court was supportive to the judgment passed by the Trial Court. The Trial Court as well as Appellate Court did not lay emphasis on Ext. D and Ext. D/1. Ext. D is a separate page under Khatian 1009 and Ext. D/1 is the R.S. Record of Rights standing in the name of co-sharers including the name of Ram Gopal Ghosh.

On perusal of the judgments passed by the two courts it is clear that the Trial Court as well as the Appellate Court did not solely rely on Records of Rights to come to the conclusion but on other documents. It is settled law that the Record of Rights does not confer any title for the same reason both the Courts below did not lay much emphasis on Ext. D and Ext. D/1 which are Record of Rights.

The Appellant/Defendant No. 1 filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908. The Learned Counsel for the Appellant/Defendant No. 1 vehemently pressed the application to be allowed. Sum and substance of the pleading is that, according to the plaint, Plaintiffs/Respondents purchased the property from one Gopal Chandra Roy and Sunil Chandra Roy. But they had transferred their right, title and interest *a priori* by a registered deed of sale in the year 1973 in respect of 30 decimals of land which

proves that at the time of purchase the vendor of the Respondents/Plaintiffs had no title.

The Learned Counsel for the Respondents strongly opposed the application.

On perusing the plaint, it appears that the Plaintiffs/Respondents alleged in Para 8 that taking advantage of absence of Gopal and Sunil Chandra Roy, Siddheswar Seal got a forged deed executed. The Defendants denied the execution of such forged deed in their written statement. This clearly shows that the alleged deed was known to the Appellant/Defendant No.1 and the Respondents/Plaintiffs from the every inception of the suit. The Plaintiff alleged forgery and the Defendant denied that but Appellant/Defendant No.1 refrained from producing that deed both in the Trial Court as well as in the First Appellate Court. It appears and only conclusion the Court can come to is that this is deliberate withholding of document which could have been produced before the Trial Court or in the Appellate Court. At this stage, these documents cannot be allowed to be produced since it was not discovered per chance. Accordingly, the application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 is dismissed.

On perusal of the judgment passed by the Trial Court, upheld by the First Appellate Court, this Court is of opinion that both the Courts rightly concluded in favour of the Respondents/Plaintiffs. Both the decisions are based on proper appreciation of documentary as well as oral evidences. Neither of the courts committed any error in law. Therefore, the concurrent findings of the both the courts need not be interfered into.

In nutshell, the instant appeal is dismissed with costs of Rs.50,000/- to be payable within 30 days of drawing up this appellate decree.

The Appellant/Defendant No.1 shall comply with the decree of the Trial Court within one month from the date of drawing up of decree by this Court, in case of failure of which, execution proceeding shall be drawn up by the Respondents/Plaintiffs. It is clarified that in case of default in payment of costs so imposed by this Court the execution proceeding would be the same.

The instant Second Appeal stands disposed of.

Trial Court Record may be returned.

(Sugato Majumdar, J.)