
(2018) 05 CAL CK 0232
In the Calcutta High Court
Case No : C.O. No. 1298 of 2018

Kamaluddin Alias Kamaluddin Mondal & Ors.

APPELLANT

Vs

Ismail Mondal & Anr.

RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Indian Evidence Act, 1872 — Section 114
Constitution Of India, 1950 — Article 227

Citation : (2018) 05 CAL CK 0232

Hon'ble Judges : SABYASACHI BHATTACHARYYA, J

Bench : Single Bench

Advocate : Samit Sanyal, Anirban Deb

Final Decision : Dismissed

Judgement

The petitioners were defendants in a suit for declaration, that the property in question is wakf property and for other consequential reliefs. The suit

was decreed by the Wakf Tribunal, against which the present application has been preferred. It was found by the Tribunal that one Kasimuddin

Mondal dedicated the property in question by a registered deed dated July 27, 1954 for management and maintenance of a mazar and other religious

and charitable purposes. It was further found that the said wakf was enrolled with the Board of Auqaf (the then Board of Wakf), on October 06, 1970

under EC No. 14212. The plaintiff claimed through the said Kasimuddin Mondal.

On the other hand, the defendants relied on the title of one Ejahar Ali who, according to the petitioners, transferred the property by several registered

deeds to one Rejjack Ali in the year 1967. The defendants claimed through the said Rejjack Ali. Learned counsel for the petitioners submits that the

judgment and decree of the Tribunal ought to be set aside since it was the

specific claim of the petitioners that Kasimuddin Mondal never had title in respect of the suit property; in fact, it was Rejjack Ali, who was owner of the property at the relevant juncture. After transfer of the property to Rejjack, the heirs of Rejjack, according to the petitioners, came in possession of the suit property, which the petitioners sought to establish by corroborative evidence.

The petitioners next submit that there could have been a previous suit of 1988, which was similar in nature to the present one. Such suit having been dismissed, the present suit was barred by *res judicata*. However, it is not found from the entire impugned judgment that the petitioners could establish such fact by cogent evidence. The third point canvassed by the learned counsel for the petitioners is that the property could not have been transferred in view of the same being in excess of the quantum stipulated under the West Bengal Estate Acquisition Act.

In any event, the petitioners submit that, the State of West Bengal granted patta in respect of the suit property in favour of the petitioners, which creates some presumption that the property was not a wakf property. The logic behind such argument is that since the State conferred right in such property, there has to be a presumption that it was not a wakf property. It appears that none of the said arguments hold good ground.

As to the conflicting claims of title of Kasimuddin Mondal and Ejahar Ali, since none of the parties produced concrete evidence to establish the title of either of such persons, one has to go by the documents available on record. The registered deed of dedication executed by Kasimuddin, dated July 27, 1954, was the prior document than the registered deed of Rejjack Ali, which was of the year 1967. However, the deed of 1954 raised a prior presumption than the deed of 1967. As such, the Tribunal committed no error that could be interfered with under Article 227 of the Constitution of India disbelieving the prior deed and relying on the present deed of the present petitioners.

As to the other contentions, the suit of 1988, as alleged, and its scope or the cause therein, all never saw the light of the day on paper in the tribunal.

The petitioners apparently did not produce the pleadings or other materials of such suit and/or the judgment or decree passed therein. Although learned counsel for the petitioners makes a last-ditch effort to save the day by seeking

leave to produce relevant papers in that regard, this Court feels that it would not be proper to permit the petitioners to do so at this juncture, which is too late in the day. Since the petitioners got ample opportunities, as defendants before the Tribunal, to produce whatever documents they had, under Article 227 of the Constitution of India this Court would not permit the petitioners to stall the proceedings by de novo efforts in that direction.

As to the contention raised regarding the applicability of the West Bengal Estates Acquisition Act, the contentions are entirely on factual premise, which, since not established before the Tribunal, cannot be agitated now afresh. Regarding the patta granted by the State Government, in view of rebuttal of such presumption raised in that patta by prior document and other evidence on record, the sanctity of the patta is lost. The patta has to be subject to prior documents. Since the Tribunal proceeded on the basis of solid documents and enrolment of the property as wakf property on October 06, 1970, which is much prior to the grant of patta, no applicability of Section 114 of the Indian Evidence Act can be invoked in the present case.

As such, since the judgment of the Tribunal was based on correct legal considerations and proper appreciation of the facts, there does not arise any occasion to interfere with such judgment and decree. Accordingly, C.O. No. 1298 of 2018 is dismissed without any order as to costs. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of all requisite formalities.