

(2014) 03 CAL CK 0131
In the Calcutta High Court
Case No : S.A. No. 162 of 1999

Kartick Chandra Kamila

APPELLANT

Vs

Prafulla Kumar Mali

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Citation : (2014) 3 CHN 667

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : P.B. Sahoo, Mr. Sudhakar Biswas, for the Appellant;

Final Decision : Disposed Off

Judgement

Debangsu Basak, J.—A suit for declaration and permanent injunction was decreed by the Trial Court. On appeal, the decree was reversed. The suit was dismissed with cost. Hence the present second appeal. The plaintiff in Title Suit No. 286 of 1985 divided the immovable properties involved in the suit into three Schedules namely Schedule A, B and C. So far as Schedule A property was concerned, the plaintiff claimed that, he purchased the same from the recorded owner and, therefore, came into possession thereof. In respect of the Schedule B property, the plaintiff stated that it belonged to Draupadi Bewa who by a deed of gift dated September 23, 1921 transferred it to Gunadhar Mali. Gunadhar Mali died leaving behind only one heir and legal representative, his wife, Gayamoni. Gayamoni sold Schedule B property to the father of the plaintiff by a registered deed dated January 24, 1937. The father of the plaintiff, therefore, came into possession of the Schedule B property. So far as Schedule C property was concerned, Sashibhusan Das sold the same by a registered deed of conveyance in 1922 to the father of the plaintiff. The father of the plaintiff came into possession of the Schedule C land. After the death of his father the plaintiff came into possession of the Schedule B and C land.

2. It was claimed by the plaintiff that, the defendant wrongfully got the

properties recorded in the Records of Rights in his name. When the defendant threatened the plaintiff with dispossession, the plaintiff was constrained to file the instant suit. The plaintiff therefore prayed for declaration of title and for permanent injunction.

3. The defendant contested the suit by filing written statement. In the written statement it was claimed that, all of the suit property originally belonged to Draupadi Bewa and that, by a registered deed of gift dated September 23, 1921 Draupadi Bewa transferred those lands in favour of Gunadhar Mali. Gunadhar Mali was the father of the defendant. After the death of Gunadhar Mali, the defendant succeeded to the suit land in view of the old Hindu law, which did not permit the widow to succeed to the deceased husband's property. The defendant also claimed that, Gayamoni on the death of her husband, out of poverty, used to work in the house of the father of the plaintiff. The father of the plaintiff by misrepresentation and by practising fraud got the suit property transferred in his favour. The defendant claimed that, he inherited the property from Gunadhar Mali, was in possession of the suit property, and was paying rent to the government. The defendant, therefore, contended that, the suit was liable to be dismissed as the plaintiff did not acquire any title to the same.

4. Five issues were framed by the Trail Court. The parties adduced evidence. The mother of the defendant was alive when the oral evidence was going on. The mother of the defendant died on September 12, 1992 and the oral evidence of the suit concluded on September 4, 1992. The mother of the defendant was not called as a witness by the defendant to establish his parentage. This was commented upon by the Trail Court.

5. On consideration of the rival contentions and the evidence led, the Trail Court found the defendant not to be in possession of the suit properties. The Trail Court also did not find the defendant to be the son of the Gunadhar Mali and Gayamoni. The Trail Court found that Gayamoni was the only valuable witness to establish the parentage of the defendant. Her non-examination proved fatal for the case of the defendant before the Trail Court. The Trail Court found the plaintiff to have established title to the land. The Trail Court proceeded to decree the suit in favour of the plaintiff. The defendant was permanently restrained from causing any trouble to the peaceful enjoyment of the suit property by the plaintiff.

6. The Appeal Court, erroneously, held that the judgment of the Trail Court was on the basis of the Records of Rights published in 1340 BS. The Appeal Court proceeded to consider the Records of Rights of 1360 BS. Such Records of Rights stated that, the defendant was the owner of the land recorded therein. The Appeal Court chose to rely on the Records of Rights to find that, the defendant was the son of Gunadhar Mali. The Appeal Court found that, the plaintiff could not establish right, title, interest and possession over the suit land.

7. The present second appeal was directed to be heard on the grounds taken in the memo of Appeal by an order dated January 28, 1999.

8. Question arose, whether entries in the Records of Rights would prevail over registered deeds to determine title to immovable property.

9. On behalf of the appellant plaintiff it was contended that, the Appeal Court was wrong in arriving at a finding that, the Trail Court relied upon the Records of Rights to determine the issue. It was submitted that, the Trail Court proceeded to evaluate the evidence placed before it in the correct perspective and came to a finding as to title and not on the basis of the Records of Rights as the Appeal Court thought that the Trail Court did. The claim of the defendant to be the son of Gunadhar Mali was not appreciated by the Appeal Court at all. The Appeal Court proceeded on the basis of entry in the Records of Rights in preference to other evidence available on record to disprove the claim of the defendant as to his parentage. Such evidence was not weighed in the correct perspective.

10. The Records of Rights were not proof of title. The appellant plaintiff submitted that, such proposition of law was repeatedly laid down by both this Hon"ble Court as also the Hon"ble Supreme Court of India. Reliance was placed upon *Guru Amarjit Singh Vs. Rattan Chand and others*, and *Union of India (UOI) and Others Vs. Vasavi Co-op. Housing Society Ltd. and Others*, for such proposition. It was submitted that, registered deeds were adduced in evidence establishing the title of the plaintiff. In the deed of sale dated February 5, 1937 Gayamoni described herself to be the only heir and legal representative of her deceased husband Gunadhar. It was preposterous, contended the appellant plaintiff that, a registered deed of February 5, 1937 would falsely describe Gayamoni as the only heir and legal representative of her deceased husband in anticipation of a title suit that may be filed in 1985. It would also be preposterous, suggested the appellant plaintiff that, the mother would not describe any children that she may be having out of the wedlock in the registered deed. The story of the defendant being the son of Gunadhar was without basis.

11. In *Guru Amarjit Singh (Supra)* the Hon"ble Supreme Court was considering a suit for ejectment. Their Lordships held that, entries in the revenue records were not proof of title. They were only statements for the revenue purpose. It was for the parties to establish the claim of title to the property unless there was unequivocal admission. Their Lordships also noted that, it was not uncommon for revenue records to be tinkered to suit the exigencies. Even if the entries were made in the regular course of duty in the revenue records, such entries may furnish presumptive rebuttable evidence of being correct.

12. In *Union of India (Supra)* the Hon"ble Supreme Court of India considered a suit for declaration and injunction. In such suit while the plaintiff was tracing their title through various title deeds, the defendant was relying upon revenue records to deny the title of the plaintiff. Their Lordships held that, the plaintiff was required to prove their case, and that, the weakness of the defendant to prove its case would not entitle the plaintiff to a decree in the suit. Their Lordships referred to various pronouncements of the Hon"ble Supreme Court

including Guru Amarjit Singh (Supra) and held that, entries in the Records of Rights did not confer title.

13. The instant suit concerned declaration of title of the suit property. The plaintiff claimed title through registered deeds. The defendant sought to deny title of the plaintiff by claiming that the vendor Gayamoni did not inherit the property of Gunadhar Mali. The defendant claimed himself to be the son of Gunadhar Mali. It was for the defendant to establish that he was the son of Gunadhar Mali in absence of the parties accepting such position by agreement. In the instant case, the plaintiff denied that, the defendant was the son of Gunadhar Mali. The Appeal Court noted the contentions of the plaintiff in that regard. The plaintiff pointed out that the date of birth of the defendant as per Exhibit ?6? was October 6, 1946. Gunadhar Mali died long before 1946. Therefore, the defendant could not be the son of Gunadhar Mali. The Appeal Court however found that, Exhibit ?6? was not properly proved by the plaintiff. The plaintiff drew the attention of the Appeal Court to an affidavit of the defendant affirmed on July 2, 1986 wherein the defendant stated that on July 2, 1986 he was 42 years old. The plaintiff contended that, there was contradiction in the claim of the defendant as to his age, appearing in Exhibits ?6? and ?7?. The affidavit of the defendant affirmed on July 2, 1986 was marked as Exhibit ? 7?. The Appeal Court discounted Exhibit 6 as not being adequately proved by a proper person. The Appeal Court discounted Exhibit 7 which was the affidavit of the defendant as a document which did not prove beyond any reasonable contradiction the age of the defendant. The Appeal Court chose to rely on the entries in the Records of Rights for 1360 BS to find in favour of the defendant. Significantly, the mother of the defendant did not adduce any evidence. In the deed of 1937 she claimed to be the sole heir and legal representative of Gunadhar Mali.

14. In the instant case, the plaintiff discharged his burden of proof with regard to the title of the land by disclosing and proving the title deeds. As against the title deeds was the defendant's claim of parentage. The defendant failed to establish his parentage beyond reasonable doubt. The Appeal Court erred in considering the Records of Rights as a document of title. Records of Rights cannot be considered as documents of title. At best Records of Rights had evidentiary value of possession which was rebuttable. In the instant case the plaintiff adduced evidence of title to the property much better than that adduced by the defendant. The reliance by the Appeal Court on the Records of Rights to find the parentage of the defendant was also suspect. In Guru Amarjit Singh (Supra) the Hon'ble Supreme Court noted that, it was not uncommon that revenue records were often tinkered to suit exigencies. Records of Rights were, therefore, not very reliable documents.

15. In the facts of the instant case the plaintiff having established his title to the land, was entitled to the decree of declaration and permanent injunction as prayed for. The plaintiff would therefore be entitled to a decree in terms of

prayers (a) and (b) of the plaint. The parties would bear their respective costs.

16. S. A. No. 162 of 1999 is disposed of accordingly. There will be no order as to costs.