
(2011) 11 CAL CK 0059
In the Calcutta High Court
Case No : S. A. No. 333 of 2005

Lakshmi Narayan Mondal

APPELLANT

Vs

Amiya Ghosh and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Evidence Act, 1872 — Section 115
Hindu Succession Act, 1956 — Section 23
West Bengal Land Reforms Act, 1955 — Section 14(6)

Citation : (2011) 11 CAL CK 0059

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : K.J. Tewari and Mr. Biplab Guha, for the Appellant; Asish Kumar Sanyal and Mr. Bikash Kumar Roy, for the Respondent

Final Decision : Allowed

Judgement

Tarun Kumar Gupta, J.—Plaintiff is the appellant in this case of reversal of judgment.

2. The appellant /plaintiff filed a suit alleging that the suit property being part of plot Nos. 1454 and 1455 together with another plot No.1453 originally belonged to the plaintiff's father Sachinandan Mondal and his uncle Jashodanandan Mondal in equal shares. Though they had separate houses thereupon but possessed those plots which were lying in amalgamated condition in ejmal. The plaintiff's father died in 1996 leaving behind sons being plaintiff and proforma defendant No.4 Narayan Mondal, wife, proforma defendant No.5 Bimola Mondal and daughters being the defendant No.3, Shibani Pal and one Sabitri Ghosh as his only heirs. Both Shibani and Sabitri were married and were residing in their respective matrimonial homes. Jashodanandan Mondal had no wife or issue and was looked after by the plaintiff. Jashodanandan Mondal gifted the suit house wherein he used to reside along with other properties to the plaintiff by a registered deed of gift dated 6th of January, 1970 and handed over possession.

In the said deed of gift Jashodanandan Mondal gifted half portion of plot No.1454 having a total area of seven decimals but wrongly it was noted as three decimals. Jashodanandan Mondal also gifted two decimals of vacant land in plot No.1454 on the same date i.e., on 6th of January, 1970 to defendant No.3 who was a widow and used to look after Jashodanandan Mondal. Jashodanandan Mondal died in the year 1982 and thereafter plaintiff constructed a house with the consent of his brother on plot No.1455 on the south west portion. The ancestral house of the plaintiff, the house of Jashodanandan and newly constructed house of plaintiff were shown in the sketch map annexed to the plaint. Defendant No.1 Amiya Ghosh was the only daughter of defendant No.3 Shibani Pal. Amiya Ghosh was married with Muktipada Ghosh (defendant No.2). Amiya and Muktipada started to reside in the suit house which was received by plaintiff from his uncle through gift, on and from 14th of April, 1989 as a licensee on the undertaking that soon they would go away after constructing their house. As those defendants refused to vacate said house plaintiff revoked the licence on 19th of July, 1992. But in spite of said revocation they did not leave the suit house. Hence was the suit for eviction after revocation of licence and for "khas" possession. The defendant No.3 has transferred the portion of plot No.1454 which was received from Jashodanandan Mondal to his son-in-law i.e., defendant No.2. Though the defendant No.3 is the owner of 1/5th portion out of total half portion of plot No.1454 owned by her father as per Hindu Succession Act but she had no right to reside therein or to permit any other to live therein.

3. Defendant No.1, 2 and 3 contested said suit by filing a joint written statement. Denying material allegations of the plaint they contended inter alia that the suit was bad for defect of parties as Sabitri Ghosh, since deceased, or her heirs were not impleaded as parties in the case. They, however, admitted that Sachinandan Mondal and Jashodanandan Mondal were the owners of plots in equal shares. When defendant No.3 became widow, her daughter defendant No.1 was only six months old. She was brought by Jashodanandan and looked after her. Jashodanandan gifted four decimals of suit plot No.1454 and two decimals of plot No.1455 to defendant No.3 through a registered deed of gift dated 5th of January, 1970 and surrendered possession therein. Defendant No.3 while owning and possessing said land gifted the same to his son-in-law defendant No.2 by a registered deed of gift dated 22nd of September, 1988 wherein plaintiff signed as a witness. On 16th of October, 1990 there was unregistered "Bantannama" with regard to plot No.1454 and 1455 between plaintiff and defendant No.2 in presence of other persons. The defendant No.2 thereafter constructed a new house on said six decimals of land with necessary permission from proper authority and raised boundary wall. Defendant No.2 also took loan from L. I. C. I. for said purpose. The question of granting licence was false. As defendant No.3 asked the plaintiff to partition the suit property, the false case was filed.

4. Parties adduced oral as well as documentary evidence in support of their respective cases.

5. Learned Trial Court decreed the suit by making following observations:

(1) Both the parties admitted that Sachinandan Mondal and Jashodanandan Mondal owned suit plot No.1455 and 1454 together with plot No.1453 in ejmal each having eight annas share therein though they used to reside in separate houses standing on those plots of lands.

(2) Sachinandan Mondal died in 1966 leaving behind plaintiff and proforma defendant No.4 as sons, proforma defendant No.5 as wife and defendant Nos. 3 and one Sabitri Ghosh as daughters and only heirs. Shibani Pal defendant No.3 and Sabitri Pal, since deceased, were married and used to reside in their respective matrimonial house. They being married daughters cannot have any right of residence in ancestral dwelling house u/s 23 of the Hindu Succession Act.

(3) Jashodanandan Mondal transferred the suit house which belonged to him along with some other lands to the plaintiff through a registered deed of gift dated 5th of January, 1970 whereas he gifted some land on suit plots to defendant No.3, Shibani Pal, widow daughter of brother, for constructing a house thereupon.

(4) Admittedly, defendant Nos. 1 and 2 are residing in the suit house which was gifted to the plaintiff by his uncle Jashodanandan Mondal. Though defendant No.3 Shibani Pal claimed to reside in the suit dwelling house but it came out from the endorsement of summons as well as A/D card that she received notice in the address of her matrimonial house.

(5) The defendant No.3 Shibani Pal gifted the lands she received from her uncle to her son-in-law defendant No.2 Muktipada Ghosh by a deed of gift dated 22.09.1988 but defendants failed to establish by any cogent evidence that defendant No.2 constructed a house thereupon.

(6) The "Bantannama" Ext. C (1) was not registered and had no force of law.

(7) "The "Bantannama" was not proved to be executed by plaintiff as it was not put to plaintiff during his deposition and signature appearing thereupon was denied to be that of plaintiff during cross-examination of defendant No.2.

(8) The allegation that the suit property was not fully described and vague had no basis as sketch map was annexed to the plaint and defendant No.2 while deposing as D.W. 1 has specifically admitted that the sketch map as annexed to the plaint was correct.

(9) Sabitri Pal, since deceased, or her legal heirs were not necessary parties as the suit was not for partition but for eviction of licensee on revocation of licence.

(10) Even in the deed of gift executed by defendant No.3 Shibani Pal in favour of her son-in-law Muktipada Ghosh, defendant No.2 there was no mention of existence of any house thereupon. Defendant Nos. 1 and 2 were in possession of the suit house which originally belonged to Jashodanandan Mondal and was gifted to the plaintiffs through a deed of gift.

(11) The possession of defendant Nos. 1 and 2 in the suit house was nothing but of a licensee and that plaintiff was entitled to get a decree of recovery of possession on revocation of licence.

6. Learned Lower Appellate Court set aside said judgment and decree on the following grounds:-

(a) Ext. 4 and Ext. C indicate that Jashodanandan Mondal died intestated.

(b) The plaint as well as Ext. B (unregistered Bantannama) held between plaintiff and defendant No.2 indicate that the suit house is not undivided dwelling house and legal heirs of deceased Jashodanandan Mondal did not occupy the dwelling house wholly.

(c) Unregistered Bantannama (Ext. B) though has no value in the eye of law in respect of partition as per provisions u/s 14(6) of W. B. L. R. Act, 1955 but it has evidentiary value as plaintiff has not disproved the document.

(d) In view of Ext. (B) the plaintiff is estopped u/s 115 of the Evidence Act to say that aforesaid Bantannama has not taken place in earlier occasion as he did not disprove his signature on it.

(e) The provisions of Section 23 of the Hindu Succession Act is applicable only in case of death of a Hindu male intested but Ext.4 speaks that Jashodanandan Mondal has expressed his will to transfer some portions from his share to Shibani Pal by way of executing deed of gift. As such, Section 23 of the Hindu Succession Act had no application.

(f) Shibani Pal has acquired right, title, interest and possession over the suit property on the strength of Ext.4 and said right passed to defendant No.2 Muktipada Ghosh on the strength of a deed of gift (Ext.C/1) executed on 22nd September, 1988.

(g) The story of granting licence to the defendant Nos. 1 and 2 in the suit property on 14th of April, 1989 was not believable.

(h) The fact of construction by defendant No.2 over the suit property is not required to be proved as he acquired ownership over the suit property on 22nd of September, 1988.

7. At the time of admission of this appeal the following substantial questions of law were formulated.

(1) Whether the Learned Court of appeal below committed error of law in holding that Jashodanandan Mondal did not die intestate by wrongfully interpreting Exhibit "4" and Exhibit "3" as a Will.

(2) Whether the Learned Court of appeal below committed substantial error of law in relying upon Exhibit "B" which is invalid document in view of Section 14(6) of the West Bengal Land Reforms Act.

(3) Whether the Learned Court of appeal below committed substantial error of law in holding that the respondents acquired title to the property by totally misconstruing the materials on record.

8. Mr. K. J. Tewari, learned advocate for the appellant/plaintiff, has submitted that learned Lower Appellate Court reversed the well-reasoned judgment of learned Trial Court giving much reliance on an unregistered alleged "Bantannama" (Ext.-B). According to Mr. Tewari after coming into operation of sub-Section 6 of Section 14 of the West Bengal Land Reforms Act with effect from 7th of August, 1969 there cannot be any partition of landed property except by a decree or order of a Court or by registered instrument. According to him, said unregistered "Bantannama" dated 16th October, 1990 had no value in the eye of law. In this connection, he has further submitted that though it was alleged that appellant plaintiff put his signature on said "Bantannama" (Ext.5) but it was not even shown to the plaintiff during his evidence and that plaintiff all along denied the same.

9. Mr. Tewari has next submitted that Jashodanandan Mondal gifted the suit house wherein he used to reside along with some other properties to the plaintiff by a registered deed of gift dated 6th January, 1970 and handed over possession. According to him, though Jashodanandan also gifted some landed properties to defendant No.3 Shibani Pal on the same date by registered document but it is apparent from said document that Jashodanandan gifted vacant lands to Shibani for construction of a house thereupon.

10. Mr. Tewari has next contended that there was specific assertion in the plaint that defendant Nos. 1 and 2 were residing in the house of Jashodanandan Mondal which was gifted to the plaintiff, with leave of the plaintiff and that there was no evidence that defendant Nos. 1 and 2 were residing on any other building constructed by them on the suit property. Accordingly, Mr. Tewari has submitted that learned Lower Appellate Court passed a judgment of reversal on wrong assumptions of both law and fact and that the same should be set aside by this Court.

11. Mr. Asish Kumar Sanyal, learned advocate for the respondent, on the other hand, has submitted that Jashodanandan gifted 6 decimals of land in two plots to defendant No.3 Shibani Pal who later on gifted the same to her son-in-law (defendant No.2). According to him Defendant No.2 later on made construction thereupon by taking loan from L. I. C. and other authority and that appellant plaintiff's case for granting licence to defendant Nos. 1 and 2 to reside in said house had no leg to stand upon. Mr. Sanyal has further submitted that there was no evidence that defendant Nos. 1 and 2 were residing in the dwelling house of Jashodanandan which was gifted to the plaintiff. He has next contended that learned Lower Appellate Court was right to hold that as plaintiff put his signature on said "Bantannama" plaintiff was estopped to deny the same.

12. There is no denial that Jashodanandan gifted his house and some other

landed properties to the appellant plaintiff through a registered deed of gift dated 6th of January, 1970 and also gifted some vacant lands to defendant No.3 Shibani Pal on the same date under registered document. It is apparent from said deed of gift executed in favour of defendant No.3 Shibani Pal that no house was gifted to her and that only vacant lands were gifted to her for making construction thereupon. From the oral and documentary evidence it was clear that appellant plaintiff became owner of the house of Jashodanandan on the strength of said deed of gift dated 6th of January, 1970. Even in the deed of gift executed by defendant No.3 Shibani Pal in favour of her son-in-law Muktipada Ghosh defendant No.2 there was no mention of existence of any house thereupon. Defendant No.2 tried to make out a case that he constructed a house wherein he was staying, by taking loan from L.I. C. and other authorities. But unfortunately, he has failed to establish the same.

13. In the plaint a sketch map was annexed depicting the house of Jashodanandan as the suit house wherein defendant Nos. 1 and 2 were residing as licensee under plaintiff. The defendant No.2 while deposing as D.W.1 has categorically admitted that the sketch map as annexed to the plaint was correct. As such it is apparent from the aforesaid admission of defendant No.2 (D.W.1) coupled with other materials on record that defendant Nos. 1 and 2 were residing in the house of Jashodanandan which was gifted to the plaintiff long back.

14. Learned Lower Appellate Court put onus upon plaintiff to disprove the unregistered "Bantannama" and / or to disprove his signature thereupon. The alleged unregistered "Bantannama" was brought into evidence by contesting defendants. It was their duty to prove the same as well as the signature of the plaintiff thereupon. During evidence of plaintiff said "Bantannama" and or alleged signature of the plaintiff thereupon was not produced to contradict plaintiff. Rather plaintiff disowned his signature on said "Bantannama" during cross-examination of defendant No.2 (D.W.1) when said "Bantannama" was brought into evidence. As such there was no question of applying the law of estoppel against plaintiff. It is not at all clear wherefrom learned Appellate Court came to the conclusion that Ext.4 and Ext. C had characteristic of will. Those two documents are nothing but deeds of gift executed by Jashodanandan, one in favour of plaintiff (Ext.4) and the other in favour of defendant No.3 Sibani (Ext. C).

15. In the facts of this case Section 23 of Hindu Succession Act had no application whatsoever.

16. It appears that learned Lower Appellate Court based his judgment on some extraneous matters and also against evidence on record. As such, the judgment impugned reversing the well-reasoned judgment of learned Trial Court cannot be sustained.

17. As a result, the appeal is allowed on contest.

18. The judgment and decree dated 30th of March, 2005 passed by learned Civil

Judge (Senior Division), Kandi, Murshidabad in Title Appeal No.7 of 2003 is hereby set aside by restoring the judgment and decree dated 30th September, 2002 passed by learned Civil Judge (Junior Division), 1st Court, Kandi, Murshidabad in Title Suit No.261 of 1992.

19. However, I pass no order as to costs.

20. Send down Lower Court Record along with a copy of the judgment to the Lower Court.

21. Urgent xerox certified copy of this judgment be supplied to learned Counsel / Counsels of the parties, if applied for.