

(2018) 12 CAL CK 0017

In the Calcutta High Court

Case No : Tnder Second Appeal No. 310 Of 2018

Sachin Mondal And Others

APPELLANT

Vs

Sadhan Mondal And Others

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, 100, Order 41 Rule 11
West Bengal Land Reforms Act, 1955 — Section 51(c)
Evidence Act, 1872 — Section 90

Citation : (2018) 12 CAL CK 0017

Hon'ble Judges : Subhasis Dasgupta, J; Harish Tandon, J

Bench : Division Bench

Advocate : Partha Pratim Roy

Final Decision : Dismissed

Judgement

This appeal arises from the judgment of affirmance. Both the Courts below held that the plaintiffs/respondents have proved their title in respect of the 'ka' schedule property and the defendants/appellants were permanently restrained from interfering with the possession in respect thereof.

At the very outset, we must record that the first appellate court has not discharged its duties entrusted upon it under Section 96 of the Code of Civil Procedure in proper manner. The first appellate court has proceeded to decide the appeal in cursory manner, though it is expected to deal with the points in more elaborate and lucid way. Since the first appellate court affirms the judgment and decree of the trial court, we had an occasion to peruse the judgment delivered by the trial court while decreeing the suit.

Both the parties are claiming rival title in respect of the properties. According to the plaintiffs, one Monimohan Mukhopadhyay and Nityananda Mukhopadhyay were the recorded owners of the property in question, which was transferred to Naba Kumar Mondal by executing a sale deed on 28th March 1931. Upon the death of the said purchaser, namely, Naba Kumar Mondal, his three sons,

namely, Makhanlal Mondal, Nanilal Mondal and Atul Krishna Mondal succeeded the estate including the suit property and the plaintiff nos. 3 to 9 claimed to have inherited the same upon the death of the aforesaid sons.

It is further stated that the properties were put in auction because of the non-payment of the statutory dues and one Panna Lal Sardar and Bama Charan Adhikary purchased the same. Subsequently, Panna Lal Sardar sold, transferred and conveyed 1 acre 22 decimal of land to Monmath Mondal on 7th May 1948 by executing a sale deed. Bama Charan Adhikary also sold 2 acres 70 decimal of land to Atul Krishna Mondal on 24th May 1948. Both Makhanlal and Nanilal being the plaintiff nos. 1 and 2 and the sons of Naba Kumar Mondal purchased 1 acre 55 decimal of land from the heirs of Atul Krishna Mondal through a sale deed and thereafter became the owners thereof. The plaintiffs claim to have discharged all statutory obligations by paying the land revenues but the Record of Rights showed an erroneous entry.

It is a specific case of the plaintiffs that taking advantage of such erroneous entry in the Record of Rights, the defendants threatened to interfere with the possession, which restrained the plaintiffs to file a suit for declaration of their right, title and interest in respect of the immovable property and also permanent injunction restraining the defendants from interfering with the possession in respect thereof.

Before we proceed further, it would be axiomatic to adumbrate the defence taken by the contesting defendants before the trial court. The contesting defendants admit that the suit property originally owned by Nityananda and Monimohan. It is further stated that after the death of Nityananda, the defendant no. 1 being the heir inherited his share and in the like fashion the defendant nos. 2 and 3 inherited the property on the death of Monimohan. Subsequently, the heirs of Monimohan transferred 68 decimal of land to Ajit Kumar Mondal, the defendant no. 6, on 2nd December 1981 by executing a sale deed and Jyotish Chandra also transferred 68 decimal of land to Ajit Kumar Mondal on the same day by executing separate sale deed. The other defendants being the defendant nos. 5 and 6 claim to have inherited the property upon the death of Ajit Kumar Mondal. Curiously enough, it has been stated in the written statement that the sale deed dated 28th March 1931 is fake and forged one having executed by falsely impersonating Nityananda and Monimohan.

Several other pleas have been taken, which appears to be technical in nature including one that in view of an express bar under Section 51(C) of the West Bengal Land Reforms Act, 1955, the suit is not maintainable.

The trial court decreed the suit as the defendants could not prove that the sale deed dated 28th March 1931 was sham one and also repelled all other technical issues having no substance in it.

As indicated above, we do not find that the first appellate court has drafted the judgment in the manner as expected from it, but after hearing the learned

Advocate appearing on behalf of the defendants/appellants as well as the judgment of the trial court, we feel there is no impediment on the part of the second appellate court to consider the case for the limited purpose whether it involves substantial question of law, as required under Section 100 of the Code of Civil Procedure.

We can see from the stand of both the parties that there is a common thread i.e. Nityananda and Monimohan, who were the original owners of the suit property. Some of the defendants claim title over it by way of inheritance and some on the basis of the divestation of right, title and interest from such heirs by passage of time.

It is a trite law that if a person divested his title to the property by executing a document required under the law, such property cannot form part of his estate upon his death to be passed upon his successors under the Succession Act. It is only those properties, which were owned and possessed by the deceased on the date of his death, can be said to have gone to the heirs by way of inheritance.

The deed dated 28th March 1931 executed by the admitted owners was produced by the plaintiffs/respondents and was received in evidence by exhibiting the same. It is not open to the defendants to throw any challenge on the veracity, genuinity and authenticity of the said deed merely by way of defence in the written statement that the same is fake and forged as those owners were falsely impersonated therein, more so, when it comes from the person, who was not alive or born on the said date. A registered document has a presumptive value of its due execution and if the said document is more than thirty years it raises a strong presumption under Section 90 of the Evidence Act. The defendants did not file any counter claim seeking rival title as well as a declaration that the said deed is fake and forged one. We also do not find any convincing materials forthcoming from the record that the contesting defendants have been able to prove such facts.

The learned Advocate appearing on behalf of the appellants is very much vocal in his submission that the plaintiffs/respondents have failed to prove their title to the property as they could not produce the document relating to sale of those property in auction.

We do not find that such aspect can have any bearing on the core issue when the defendants themselves admitted the right, title and interest of Nityananda and Monimohan. Furthermore, a document being Exhibit-6 has a significant value to dispel the contention of the defendants on such lapses on the part of the plaintiffs. The defendants have to prove their own case and cannot take advantage of the plaintiffs' weakness.

It transpires that Nityananda and Monimohan sold their right, title and interest in the property to Naba Kumar Mondal and on his death, his three sons, of which Makhanlal and Nanilal subsequently purchased a portion of the said property from the heirs of Atul Krishna Mondal, who claimed to have purchased the

property from auction purchaser. There is no occasion on the part of the heirs of Naba Kumar to purchase the portion or a part of the said property if there is no incident of auction having occurred creating a title into Atul Krishna from the heirs of Atul Krishna.

We do not find that such discrepancy can be fatal and there is a missing link in the antecedent of the property and the respective rights flowed therefrom.

We, therefore, do not find that there is any illegality and/or infirmity in the impugned judgments and decrees passed by the Courts below. We also do not find the involvement of substantial question of law.

The appeal is, thus, dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There shall, however, be no order as to costs.