

Haridas Mondal Vs. Sahadeb Mondal

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Court : Kolkata

Decided On : Jan-17-1980

Reported in : AIR1980Cal140

Judge : B.N. Maitra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 96 - Order 39, Rule 1

Appeal No. : C.R. No. 3127 of 1976

Appellant : Haridas Mondal

Respondent : Sahadeb Mondal

Advocate for Def. : Rabin Mitra and ;Muraridas Roy, Advs.

Advocate for Pet/Ap. : Kishore Mukherjee and ;Bhudev Bhattacharyya, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

B.N. Maitra, J.

1. The plaintiff's case is that one Rajmohan Mondal was the owner of the entire 22 decimals of land noted on the schedule 'Ga' to the plaint. After his death, his son, Sadhan Mondal, inherited the property. He executed a power of Attorney in favour

of the plaintiff's wife, Manorama Debi. On the footing of that power of Attorney, she sold the said property to the plaintiff by a registered kobala dated 27-5-1975. The suit is for a permanent injunction. An application for a temporary injunction was put on by the plaintiff.

2. The defendant filed an objection. The allegation is that in 1961 Rajmohan Mondal executed a deed of agreement for selling the property to him. On the strength of that document, he is in possession of the land in question on payment of rent. The plaintiff's purchase is a collusive one.

3. The prayer for temporary injunction was turned down by the learned Munsiff. The plaintiff-petitioner moved up in appeal and was unsuccessful before the learned Additional Subordinate Judge, Nadia. Hence this revisional application by the petitioner.

4. It has been argued on behalf of the petitioner that here there is a fight between a registered document and an unregistered deed of agreement. The plaintiff obtained a registered sale deed in his favour on 27-5-1975. Thereafter he filed the present suit to establish his title to the property in question. The defendant does not possess any registered document. He has simply put in an unregistered deed of agreement said to have been executed by Rajmohan Mondal in his favour in 1961. The plaintiff never admitted in the courts below that the defendant-opposite party was in possession of the entire property. Since there is a fight between a registered document and the questionable unregistered document, the Court should allow the prayer on a finding that the plaintiff has a prima facie case.

5. It has been argued on behalf of the opposite party that the plaintiffs purchase is a sham one because he purported to purchase the property from his wife, Manorama Debi. There is concurrent finding by both the courts below that the defendant is in possession of the property. In that view of the matter, this revisional application should not be allowed.

6. Of course, it has been rightly contended on behalf of the petitioner that in view of the provisions of Section 54 of the Transfer of Property Act, the agreement to purchase the property does not create any interest therein. Nevertheless, both the

Courts have stated that the plaintiff could not produce any rent receipt to show payment of rent. On the other hand, all the rent receipts came from the custody of the defendant. There is no denial that the defendant is in possession of at least 2 decimals of land by raising a structure thereon. In that view of the matter, the prayer for temporary injunction was rejected by both the Courts.

7. The view of Calcutta High Court is clear. In the well-known case of Durga Das v. Nalin Chandra Nandan, (1934) 38 Cal WN 771, Lord Williams, J., laid down the law on the subject. There was a difference of opinion between two Judges of this Court. The matter was referred to the third Judge, Buckland A.C.J., who accepted Lord Williams, J.'s views. It has been stated that an order passed under the provisions of Order 39 Rule 1 of the Code of Civil Procedure is a discretionary one and the Appellate Court ought not to interfere with the exercise of a Judge's discretion rejecting such petition unless it is satisfied that it was not exercised judicially, that is to say, that the Judge acted on wrong principles. The mere fact that the Judge of the Appellate Court might have taken a different view is not a sufficient ground for interference. If the Judge rightly appreciates the facts and applies the true principles, that is a sound exercise of judicial discretion. Appeals are to be admitted in such a case only when there is a misdirection of law or fact.

8. Here, the fact was properly appreciated and the law rightly applied. So, there is no misdirection of law or wrong appreciation of facts. In that view of the matter, the submission made on behalf of the petitioner cannot be sustained. It seems that the application for temporary injunction is rightly rejected. This revisional application does not lie.

9. The Rule is, therefore, discharged. There will be no order as to costs.