

Keshab Chandra Mukherjee Vs. Smt. Nayantara Devi and ors.

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Court : Kolkata

Decided On : Aug-28-1998

Reported in : (1998)3CALLT393(HC)

Judge : Basudeva Panigrahi, J.

Acts : [Specific Relief Act, 1963](#) - Section 34;; [Limitation Act, 1963](#) - Articles 64 and 65

Appeal No. : Civil Appellate Jurisdiction S.A. No. 230 of 1993

Appellant : Keshab Chandra Mukherjee

Respondent : Smt. Nayantara Devi and ors.

Advocate for Def. : Mr. S.P. Roy Chowdhury, ;Mr. A. Bagchi and ;Mr. T. Chakraborty, Advs.

Advocate for Pet/Ap. : Mr. Bidyut Kumar Banerjee, ;Mr. Amit Roy and ;Mrs. Sudipa Roy, Advs.

Judgement :

B. Panigrahi, J.

1. This appeal Is directed against the Judgement and Decree passed by the Additional District Judge. Alipore, in Title Appeal No. 137 of 1989 affirming the

Judgement and Decree dated 7th June, 1989 and 27th July, 1989 respectively passed by the Assistant District Judge, Alipore in Title Suit No.94 of 1983 whereby and whereunder the plaintiff/ appellant's suit for declaration of Title and confirmation of possession was dismissed. The facts of the case, bereft of all unnecessary details, are stated as follows:

2. That the plaintiff/appellant took permanent settlement of three Bighas of land being bastu land and tank appertaining to C.S. Dag No.211 under C.S. Khatian No. 163 of Mouza Jangra in the District of 24 Parganas. under a registered lease deed dated 2nd April. 1947 from Sanlosh Bagui and others. After taking the above land being bastu, the plaintiff continued to be in peaceful possession of the same and after having possessed for sometime he divided the above plot in-to ten sub-plots by making different part and parcels of land and leased out those plots to different persons by different lease deeds retaining the balance lands and tank in plot No. 10. The land which was delineated by him previously remained under his Khas possession from which a portion was acquired for laying cut the V.I.P. Road. The defendant No. 1 took the settlement of the plot No. 10 on and from 30th March. 1948 measuring more or less 8 cottahs comprising the bastu and a very small portion of the tank. The remaining portion of the tank which was not disposed of by the plaintiff/appellant is however, the subject- matter of the present suit described in 'B' Schedule property. The appellant was for sometime away while in service and in business from 1954 onwards to Raipur and then to Danda Karanya and finally came to his native place and found that the defendant No. 1 in collusion with other defendants created some collusive and fictitious documents to defeat his rights. The plaintiff/appellant has been all along in possession of the tank and In course of time he filled-up same in the said tank. As the defendant No. 1 created some fictitious documents in favour of other defendants, therefore, the appellant apprehended that there might be some cloud shrouded over the appellants title Therefore, he filed the present suit for declaration of his title, for permanent injunction and / or in the alternative for confirmation of possession.

3. The plaintiff/appellant has further averred, inter alia, that the defendant No. 1 taking advantage of his temporary absence somehow managed to get her name recorded In the R.S. record of right although the plaintiff/appellant has been all

along in possession of the same, without any slightest disturbance or interference by the original defendant No. 1 or other defendants. The defendant Nos.6, 7, 8 and 9 had filed their written statement in the trial court, whereby they denied all materials allegation made therein by the plaintiff. The main plea in the written statement of the defendant No. 1 is that after taking settlement of the plot No. 10 consisting of the entire land and tank as well, she continued to be in possession of the suit properly and in course of time, transferred entire property to the other defendants 2, 3, and 4 some time in 1965. After her name was recorded in Revisional Settlement records, the defendant No.1 on the other hand, transferred properly to defendant No.5 who again sold the aforementioned land to Sanjit Sana and Chittaranjan Banik. the defendant No.3 similarly, sold a portion of the suit land to defendant Nos. 8 and 9. The defendant No.4 sold it to defendant No.6 who in turn sold the same to defendant Nos. 7 and 9. She further took an inexplicable plea that the plaintiff being aware of their possession right from the date of execution of lease deed in favour of defendant No.1 who have been holding possession of the property adversely to the knowledge of the plaintiff for more than thirty years, therefore, they have otherwise acquired the title by adverse possession. The suit is also oyhrrwise barred by limitation since it has not been filed within the period of limitation, the defendant No. 1 had been asserting her right as her own and the State Officials, accordingly, paid her compensation for having acquired a portion of plot No. 10.

4. The trial court after hearing both sides and considering the evidence on record, however, came to hold that the plaintiff had leased out the entire bastu including the tank from at least 1948. Since the boundary shown in the lease deed was for entire plot No.10. therefore, the Trial Court further. held that the defendant No. 1 had been in possession of the entire plot No. 10 in her own right and thus, had acquired title by adverse possession. With those findings, the plaintiff suit was dismissed.

5. The 1st appellant court also considered the evidence led by both parties and arrived at the same conclusion that the defendant No. 1 acquired title to the suil property under the lease deed, over bastu and tank as well. She covered with sand in the said suit 'B' schedule property. It was further observed that the plaintiff

was aware about the settlement proceedings but strangely maintained total silence in the matter without raising slightest demur for such wrong recording. The appellate court, while agreeing with the observations of the trial court has found that the plaintiff having failed to prove that he was in possession of the suit property at any point of time within 12 years from filing of the suit on September, 1989, he, therefore, could not have maintained the suit. The appellate court has, further observed that the plaintiff suit was otherwise barred by limitation, with those observations, the plaintiff appeal was dismissed.

6. It was seriously contended by the appellant that in this case both the courts below did not consider the true import of the lease deed executed in favour of the defendant No. 1. The plaintiff/appellant had neither any intention to give settlement nor the defendant No.1 had any intention to take settlement of more than 8 cottahs of land and a portion of tank and balance land was retained by the plaintiff. Both the courts have further erred in law in not taking into consideration the admission made by the respondent/ defendant No.1 in subsequent deed and/or document. In fact she had taken settlement of only eight cottahs of land from the appellant. The plan attached to the document should be understood with reference to the recital of the lease deed. The learned courts below have laid, undue emphasis upon plan without considering the other conditions of the lease deed.

7. The learned counsel appearing for the appellant had also invited my attention to the position that once the plaintiff has proved his title in a suit for declaration of his right, it was not obligatory on him to further substantiate that the suit has to be filed within 12 years from the date of dispossession. After Article 65 of the Limitation Act, 1963 came into force, the Suiter is required to prove his title and thereafter, the burden would shift to the defendant to show how the plaintiff had lost his title and the defendant has acquired the right by adverse possession. It has, therefore, to be understood that the possession follows title.

8. It was strongly emphasised that the record of right would neither create nor extinguish the title of any person, therefore, even such record was in favour of the defendant No. 1, if in the lease deed, it is found only 8 cottahs of land was given,

then notwithstanding such entry in the record of right she can not lay any claim on such basis.

9. There was patent error and apparent discrepancy between the recital of lease deed being exhibit (2) and the plan attached thereto. Thus, the learned courts below have committed serious illegalities in over-emphasising on the boundaries without considering the intention of the lessor and lessee as well.

10. The defendant No.1 died during the pendency of the appeal and her representatives were properly brought into record. The main defence of the respondent No. 1 is that the entire bastu as well as tank was given by the plaintiff in September, 1948 under the lease deed in exhibit (2). The plan was also annexed to the lease deed from which it would be unambiguously clear that the entire tank would be part and parcel of the plot No. 10 which have been given away to the defendant No.1. Since the plaintiff was aware that the entire tank was given to the defendant No. 1, therefore, he did not raise any objection during the revisional settlement record, wherein the defendant No. 1's name was duly recorded. In course of time, she made several transfers who have been along in possession of the same. The plaintiff has filed this speculate suit to defeat the rights of the defendants. Thus, both the courts were perfectly Justified by holding that the plaintiff had conveyed the entire tank and the defendants are in possession of the suit 'B' schedule property in their own right and they have otherwise acquired title by way of adverse possession.

11. In case, the defendant No.1 succeeds in the appeal, it can safely be held that the other defendants too have acquired right over the suit property. On the other hand, if it is held that the plaintiff has valid title over the suit 'B' schedule property, the defendants cannot claim any right over the 'B' schedule property and the judgment and decree passed by both the courts below are bound to be upset.

12. The undisputed facts are summarised here below:

13. That the plaintiff obtained three bighas of land being bastu and doba under settlement by a lease deed on 2nd April, 1947 from one Santosh Kumar Bagul and others. It is further admitted that the said plot was divided into ten plots and the

plaintiff had transferred the same in favour of different persons. Plot No. 10 was transferred to the defendant No. 1 by a document of lease on 30th March, 1948.

14. The sole matter in controversy in this appeal is whether under the document dated 30th March, 1948 only eight cottahs of land was given to the defendant No. 1 or even the balance portion of land which is covered under the suit 'B' property was also transferred. The defendant No. 1 has transferred under deeds of conveyance to other defendants. There are also inter se transfers among the other defendants. From the contention of both the parties, it appears that the appellants' case would depend upon the interpretation of the lease deed exhibit 2. Mr. Banerjee, the learned Advocate appearing for the plaintiff/appellant has strongly contended that from the terms of the lease deed, one can safely form an opinion that only eight cottahs of land was given to the defendant No. 1, under exhibit 2 because in the lease deed, eight cottahs of land was described to have been let out to the defendant No.1. For such eight cottahs the defendant had also paid salary to the plaintiff. Rent for eight cottahs was embodied in the lease deed. It has been further highlighted by the appellant that eight cottahs approximately was described in the schedule of the lease deed. Therefore, such leasehold demise cannot be swelled by six or seven cottahs more.

15. The boundary stated in the lease deed had been described for the entire plot No. 10, out of which only eight cottahs was given to the defendant No.1.

16. On careful reading of the document in Ext. 2. it is found that the plaintiff had described to let out approximately eight cottahs of land to the defendant No.1. In the document, it was further embodied by fixing amount of selami in respect of only eight cottahs at Rs. 1,800. Rent at the rate of 12 anna was fixed per cottah and if it is calculated at that rate, it comes to Rs. 6 for 8 cottahs of land which was leased out to the defendant No. 1 Exhibit 2(A) is an agreement admittedly, executed by the defendant No.1 in favour of the proposed transferee. In the said agreement, it has been described in no uncertain term that the defendant No.1 purchased eight cottahs of land on lease.

17. It has been strongly contended by the defendants that since the name of defendant No. 1 was recorded in the Record of Right in or about 1965 and the

plaintiff was conscious of such recording since then. But, it is strange how he remained quiet without taking any steps for setting aside the settlement entry. It is the settled possession in law that the entry in the R.C.R. (Record of Right) cannot create or extinguish title. What all it would speak is about the possession of a person in whose favour such entry has been made. Record of Right is not a document of title. In this case, admittedly, the defendant No. 1 was a lessee who had been in possession of the lease-hold premises. The core question arises in this case is whether defendant No. 1 can claim any right, title and interest over the land, other than the premises which has been let out to defendant No. 1. On careful consideration, it is found that the defendant No. 1 was only let out eight cottahs of land.

18. It has been argued at length that the suit is barred by limitation since the plaintiff has not proved his possession within a period of twelve years preceding the date of filing of the suit. In case the plaintiff title is established, then the burden would shift on the defendants, to establish how they acquired title by adverse possession. The plaintiff's claim still stands on a stronger footing inasmuch as he is owner of the land and it had been let out to the defendant No. 1. From the written statement, it has further transpired that the defendants have never asserted their right by stating that they remained in adverse possession by expressing hostile animus specifically mentioning the time and year. Mere vague plea on adverse possession shall not however, provide a right to the defendant to defeat the claim of the appellant.

19. It has been contended that the interpretation of documents being a question of fact, so, therefore, it is not open to the 2nd appellate court again to interpret the deed ext.2 together the intention of the parties. It has been mentioned in the previous paragraph that the intention of the parties are quite apparent only on a look to the terms of the lease deed without any extraneous evidence. The appellant had never intended to lease out more than eight cottahs of land to the defendant No.1. The defendants have, however, emphasised on a word which has been marked as 'Mai'. From the plaint filed by the appellant it can never be positively held that more than eight cottahs of land was given to the defendant No.1. But in so far as the description of the schedule in the lease deed is concerned it

is the boundary of the entire plot No. 10. After measurement of plot No.10 if any excess land would be carved out. obviously the defendant No.1 cannot claim right over such excess premises other than what was let out to her. The defendants have, however, contended that the boundaries would unmistakeably suggest that the entire plot No. 10 was given to the defendant No.1. But. I found such contention has hardly any merit inasmuch as only eight cottahs was given, therefore, the defendant No. 1 would not lay any claim beyond the demised premises.

20. Although, while deciding the second appeal, the scope of the case is very limited. But, when there is a substantial question of law, then the court's jurisdiction would not be limited. Had both the courts considered the intention of the parties as to the interpretation of the lease deed, then they would not have arrived at such wrong conclusion. Since both the courts have committed grave and serious error on facts and law; therefore, it was all the more necessary for this court to go into such question.

21. It has been contended that in the meanwhile the defendant No.1 has transferred the land in favour of the other defendants. Such inter se transfer among the defendants shall not however, defeat the right of the plaintiff, if he is otherwise entitled to.

22. The respondents have relied upon judgments reported in : AIR 1997 SC2517 and also : [1962]1SCR492 . But. none of those decisions is applicable to this case. Further reliance has been made on a judgment reported in 42 CWN page 405 in the case of Bhupati Charan v. Lalit Mohan. But the fact of that case is different from the present appeal inasmuch as claim over the land situated beyond the boundary of the lease deed could be claimed by the plaintiff. In the instant case the claim has been made by the plaintiff on the excess land of plot No. 10 which was not given on lease to the defendant No. 1.

23. In the instant case, the oral evidence adduced by both the parties weigh very little to decide the title. Admittedly, lease deed was executed and the lessee had never expressed hostile animus against the plaintiff over the suit land at any time and it could not be ascertained from the pleading.

24. Therefore, from the totality of the facts and circumstances of the case. I, disagreeing with the observation of the courts below, hereby set aside the judgment and decree of dismissal of the suit. In the result, appeal is allowed but in the circumstances without cost. Plaintiff suit for declaration of his title, permanent injunction and confirmation of possession or in the alternative for recovery of possession is hereby decreed, but without any order as to cost.

25. Appeal allowed

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