SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Proboth Chandra Malas Vs. Ratan Chandra Malas and ors.

Proboth Chandra Malas Vs. Ratan Chandra Malas and ors.

SooperKanoon Citation : sooperkanoon.com/880239

Court : Kolkata

Decided On : Feb-03-1989

Reported in : (1990)1CALLT61(HC)

Judge : L.M. Ghosh, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 11 and 100

Appeal No. : S.A. No. 936 of 1977

Appellant : Proboth Chandra Malas

Respondent : Ratan Chandra Malas and ors.

Advocate for Def. : M.K. Roy and ;C.K. Maity, Advs.

Advocate for Pet/Ap. : P.B. Sahu, Adv.

Disposition : Appeal dismissed

Judgement :

L.M. Ghosh, J.

1. Title Suit No. 36 of the 3rd Court of the Munsif, Midnapore, was filed by the plaintiffs for declaration of his title in the suit properties, for declaration that the record of right in the, name of the defendant No. 1 was wrong and for injunction restraining the defendant from disturbing the plaintiffs' possession. The plots

involved are plots 234 and 235. The learned trial Court granted a decree in respect of Plot No. 234 only. The plaintiffs' claim of title in respect of Plot No. 235 was dismissed.

2. Two appeals were preferred against the judgment and decree of the learned trial Court. The plaintiffs, Ratan and others filed Title Appeal No. 117 of 1975, because a part decree was granted. Title Appeal No. 185 of 1975 was filed by the defendant No. 2. The learned Appellate Court allowed Title Appeal No. 117 of 1975 and dismissed Title Appeal No. 185 of 1975.

3. Now the second appeal has been preferred against the judgment and decree of the learned First Appellate Court in Title Appeal No. 117 of 1975.

4. It may be stated that there is no appeal against the judgment and decree of the learned Appellate Court in Title Appeal No. 185 of 1975. That appeal related to Plot No. 234. Title Appeal No. 117 of 1975 was relating to Plot No. 235. Now the net position becomes this that the judgment and decree of the learned First Appellate Court with regard to Plot No. 234 have become final, because no appeal has been preferred against the decision relating to that plot.

5. At the outset, Mr. Roy, the learned Advocate appearing for the respondents, has submitted that as no appeal was preferred against the judgment and decree in Title Appeal No. 185 of 1975, the decision therein would operate as res-judicata and no enquiry regarding the other plot is also permissible. Mr. Sahu, the learned Advocate appearing for the appellant, has challenged this contention and has argued that as the decision in 185 of 1975 related to Plot No. 234, that cannot preclude the court from considering the position with regard to Plot No. 235. It is needless to dwell much on the point, because evidently the subject-matters in the two appeals, 117 of 1975 and 185 of 1975, are different. Mr. Roy argues that the issues involved in both the appeals were common. But when the properties are different, whatever may be the language of the issues framed, in substance there would be two issues involved, namely whether the plaintiffs established their title with regard to Plot No. 234 and whether they established their title with regard to Plot No. 235. In essence, the two issues involved must be different, because the properties are different. The objection regarding the maintainability of the appeal

on the ground that no appeal has been preferred from the other First Appeal, must be overruled.

6. This brings me to the merits of the case. The plaintiffs' case with regard to the two plots was based on a case of adverse possession. The plaintiffs stated that they adversely possessed plots 234 and 235 by raising constructions and by excavating doba thereon. In paragraph 2 of the plaint, it is clearly recited that the plaintiffs possessed plots 234 and western 40 decimals of plot 235 by exercising the acts referred to before. The defence case was simply denial. It is not disputed that originally the properties belonged to the defendant No. 1. The plaintiffs' claim was that they exercised acts of adverse possession against the defendant No. 1. Now, whatever may be the position with regard to the plaintiffs, the defendant No. 2 purchased from the defendant No. 1 the properties by Ext. A, dated 5.4.73. The defendant No. 2 claims he has acquired good title from the defendant No. 1, whose title remained unaffected.

7. On that point, the learned Munsif has been of the view that the plaintiffs constructed the existing structures 12 years before the institution of the suit on Plot No. 234. Accordingly, that adverse possession in respect of Plot No. 234 matured into good title. With regard to Plot No. 235, however, the learned Trial Court has found that adverse possession over that property for the requisite period has not been proved. The learned Munsif merely considered the subsequent act of the plaintiff of raising a second structure on Plot No. 235 in 1966. If time is reckoned from 1966, no doubt adverse possession was not complete. But the learned Trial Couit did not consider the aspect that Plots 234 and 235 were claimed to have been possessed by the plaintiffs as compact plots and there was no division of demarcation. That is to say, the plaintiffs claimed that both the plots were possessed as one and the adverse possession with regard to both the plots commenced at the same time. This broad aspect has been noted carefully by the learned First Appellate Court. It has been noted that before the construction of the bastu in 1966 on Plot No. 235, there was already a doba and well on the same plot, both belonging to the plaintiffs. Now this observation of the learned First Appellate Court is well based on evidence. The witnesses for the defendant themselves have to an extent admitted the existence of the dobas etc. D.W. 2 has

answered that at the time of R.S. operation there existed one house and one well on the suit land. Then in cross-examination, this D.W. 2 has admitted that the ancestral house of Ratan, the plaintiff No. 1 is situated to the north of well at a considerable distance therefrom and that Ratan has been residing in that house. Then he has further answered that the house of Proboth Malas stands in between the house of Ratan and the well. Thereby, it is admitted by implication that the well does not belong to Proboth. Then D.W. 4 has made another statement which goes a long way in favour of the plaintiffs. Towards the end of his cross-examination, he has answered that there is a pond in that land, meaning the suit land, and the areas of the land possessed by Ratan whereon the cow-sheds, chala and pond exist including the northern and western open land, measures 1 bigha and 5 cottahs. Then earlier he has said that to the north of the well there exist two cow-sheds and one chala and Ratan is in possession of all these. That Ratan has been possessing the structure on plot 234 has been concluded by judgment. It has come out from the Commissioner's report that the shed of the structure has extended over to Plot No. 235. All these indicate that the two plots were possessed by the plaintiffs all along in the same manner as compact lands. And for that, there is evidence on record that Ratan possesses the cow-sheds, chalas and ponds, etc. Along with that, there is the evidence on behalf of the plaintiffs. P.W. 1, who is the plaintiff No. 1 has stated that the plaintiffs have homestead on plots 234 and 235, as well as pond, well, etc. P.W. 2 has deposed that the plaintiffs have been possessing the suit lands since the time of their ancestor. Existence of houses, pond, etc., on the suit land has been referred to. Similar is the evidence of P.W. 3.

8. Thus there was ample evidence before the learned First Appellate Court as to the adverse possession of the plaintiffs with regard to both the plots. The court below was justified in coming to the conclusion in favour of the plaintiffs. There is no error of law involved, as a pure finding of fact was arrived at by the learned First Court below on the basis of sufficient evidence. Mr. Sahu, the learned Advocate for the appellant has referred to the decision reported in 1977(1) C.L.J. 578 for the proposition that when the Lower Appellate Court did not give effect to the presumption arising out of certain entries in the Record of Rights, such findings of face became open for challenge in this second appeal. But in this case, the

Record of Rights itself is being challenged and the plaintiffs have come out with the prayer for declaration that the Record of Rights is wrong. The presumption arising out of the Record of Rights is rebuttable and if on evidence, the learned Court below comes to the finding that the plaintiffs' adverse possession is proved, then at least impliedly there is a finding that the presumption is rebutted. It has been discussed that there was sufficient material before the Court below for coming to a finding in favour of the possession of the plaintiffs. The presumption of the Record of Rights was sufficiently rebutted.

19. Mr. Sahu has next referred to the decision reported in : [1964]6SCR780 for the proposition that adverse possession must be sufficient in continuity and in publicity, and extent and the plaintiff is required to show when possession becomes adverse so that the starting point of limitation, against the party affected can be found. In this case, the plaintiffs, in paragraph 2 of the plaint, have clearly set out that adverse possession commenced from 1340 B.S. The learned Trial Court was satisfied about the case of the plaintiffs with regard to Plot No. 234. The learned Appellate Court has found that adverse possession with regard to Plot No. 235 commenced on the same date when adverse possession with regard to Plot No. 234 commenced. As discussed before, that conclusion of the learned First Appellate Court is well based on materials. In this second appeal, that finding of fact cannot be disturbed, as no error of law is manifest.

10. The result is, the appeal is dismissed on contest. The judgment and the decree of the First Appellate Court are hereby affirmed. I make no order for costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com