SUPREME COURT OF INDIA

Kartick Chandra Mandal

Vs.

Netai Mondal (dead) by Lrs.

C.A.No.8 of 2009

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

06.01.2009

JUDGMENT

Dr. Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Calcutta High Court allowing the Second Appeal filed by the respondents under Section 100 of the *Code of Civil Procedure, 1908* (in short the `CPC').

3. The appellant as plaintiff filed a suit for declaration of title and recovery of khas possession and also of permanent injunction contending inter-alia that the suit land in R.S. Khatian No.31 of Mouza Chandibera under P.S. Rajarhat originally belonged to Ananda Chandra Mondal, Mubir Mondal, Bhutnath Mondal, Gadadhar Mondal, Mathar Mondal, Kartick Mondal, Haradhan Chandra Ghosh and Bishwanath Ghosh. While they were in joint possession in same for convenience of possession they made an amicable partition amongst themselves and in that partition plaintiff and proforma defendant No.3 got 12 decimals of land in plot No.223/455 which was described in schedule A of the plaint. Subsequently, by an amicable partition between the plaintiff and proforma defendant No.3, plaintiff got B schedule property, that is to say, 6 decimals of land at the southern portion of the aforesaid suit property and proforma defendant No.3 got 6 decimals of land at the northern portion of the suit plot. In this way, plaintiff got B schedule of land and C schedule of land fell in the share of pro-defendant no.3. Thereafter, as per the case of the plaintiff by way of an oral exchange, defendants 1 and 2 got C schedule property from proforma defendant No.3 and they started residing thereon by constructing house. B schedule of land was lying vacant. Plaintiff was in possession of that land by cultivation. Defendant Nos.1 and 2 threatened the possession of the plaintiff. In that background, the plaintiff filed the suit originally for permanent injunction against defendants 1 and 2. Subsequently, it was contended by the plaintiff that defendant Nos.1 and 2 dispossessed the plaintiff from the suit property and, therefore, the plaintiff prayed for recovery of possession of such property. Defendant Nos.1 and 2 contested the suit by a written statement alleging inter-alia that the plaintiff was all

along since the date of partition remained separately in his own allotted land and the defendants also were possessing the land and structure according to their own share on the portion allotted to them. In this background, they denied the allegation of dispossession from the suit property made by the plaintiff. It was the further allegation of the contesting defendants that the total land were amicably partitioned amongst themselves by the intervention of the members of the gram Panchayat as per the family arrangements. The parties were separated in respect of the possession of the land in dispute and the contesting defendants after getting the plan sanctioned, constructed the building over the allotted land. The plaintiff was not entitled to get a decree as prayed for.

4. Learned Munsiff formulated several issues and relied on certified copy of the decreed suit. The first Appellate Court has also upheld the view of the trial Court. The Second Appeal was admitted with the following questions of law:

> (i) Whether the learned Judge in the courts below substantially erred in law in completely misleading, misconstruing and misappreciating the scope of the suit for declaration, injunction and recovery of possession between the co-sharers in the absence of any legal and valid partition and erroneously decreed the suit on a misconception of law?
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> (ii) Whether the learned Judge in the courts below substantially erred in law in decreeing the suit by declaring that the plaintiff/respondent No.1 has right, title and interest in respect of `B' schedule suit property and for recovery of possession of the said property by evicting the appellants therefrom inasmuch as the learned Judge in the courts below have failed to appreciate that all the parties to the proceeding are co-sharers having joint share in the suit property and as such before valid partition neither of the co-sharers could be directed to vacate some portion of the joint property?
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> (iii) Whether the learned Judge in the courts below substantially erred in law in dismissing the appeal on a misconception of law inasmuch as per the provision of Section 14 of the West Bengal Land Reforms Act, 1955 any partition among the co-sharers other than by a registered instrument or by a decree or order of a Court is not partition at all and in absence of any valid partition among the parties, the plaintiff/respondent No.1 cannot claim for injunction to prevent other co-sharers from enjoying joint share in the property.

5. The High Court answered question No.3 in favour of the present respondents and it held that the partition, if any, did not take place prior to the introduction of Section 14 of the *West Bengal Land Reforms Act, 1955* (in short the `Act').

6. Learned counsel for the appellant submitted that there was no dispute regarding the date of partition. In fact, no issue was framed. In the plaint there was a specific assertion with reference to the R.S.R.O.R. which undisputedly is of the year 1955. Though the defendants filed written statement there was no challenge to the authenticity of the R.S.R.O.R. Though

the High Court noted that there was an admission strangely it came to hold that the admission was as regards the point of law and, therefore, decided the appeal in favour of the respondents.

7. Learned counsel for the respondents, on the other hand, supported the judgment of the High Court and submitted that though it appeared that there was no specific issue relating to the date of partition there was denial as regards the factum of partition as claimed.

8. The High Court noted that the section came into force in West Bengal w.e.f. 7.6.1965 except in the areas transferred from Bihar to West Bengal. Therefore, after the introduction of the aforesaid provision the partition of a holding can be effective only by registered instrument or by decree or order of a Court. There is no dispute so far as this aspect is concerned. As rightly contended by learned counsel for the appellant there was specific averments in the plaint as regards the partition which refers to R.S.R.O.R. Though, there was no date of partition indicated, a reference was made to the aforesaid document. The High Court after having noted that none of the parties made any endeavour to ascertain when the actual alleged partition took place came to an abrupt conclusion that from the facts and circumstances it was clear that the partition, if any, did not take place prior to the introduction of Section 14 of the Act. The basis for coming to such a conclusion is not clear. Further, the conclusion of the High Court that though there may have been admission that related to the question of law is equally unsustainable. What is the date of partition is not a question of law.

9. In the circumstances, we set aside the impugned judgment of the High Court and remit the matter to the trial Court to formulate the following issues:

What is the date of alleged partition between the plaintiff and original defendant No.3;

The parties shall be permitted to place evidence in support of their respective stand.

10. The trial Court shall hear the suit afresh on the aforesaid issue alone and decide the same in accordance with law. Since the matter is pending since long, we request the trial Court to dispose of the matter by the end of May, 2009.

11. The appeal is allowed to the aforesaid extent.