

HON'BLE MR. JUSTICE A.K. GOSWAMI

Heard Mr. MD. M.H. Rajbarbhuian, learned counsel for the appellant/plaintiff. This appeal is directed against the judgement and decree dated 02-02-2012 passed by the learned Civil Judge, Karinganj in T.A. No. 29 of 2004 dismissing the appeal and upholding the judgement and decree dated 24-12-2003 passed by the learned Civil Judge, Junior Division No.2 (presently Munsiff No.2) in Title No. 244 of 1997.

The plaintiff had filed a suit for declaration of Maliki right through inheritance in respect of suit land mentioned in 1st Schedule measuring 3 powas of land, the house mentioned in the 2nd Schedule, removal of unauthorized and illegal construction of houses there on mentioned in the 3rd Schedule and for permanent injunction restraining the defendants from creating disturbance to the plaintiff and from transferring the suit land to any other person.

There appears to be some discrepancy inasmuch as while in the 1st Schedule to the plaintiff suit land area has been described as land measuring 2 powas, in the body of the plaint it is mentioned as 3 powas. It is pleaded by the plaintiff that land of 1st Schedule within Dag No. 187 of settlement Khatian No.1 was in possession of his father Late Formuj Ali by exercise of maliki right and after the demise of his father, he inherited the same by way of inheritance and had been exercising his right and possession by way of amicable partition with the other co-sharers by constructing dwelling houses as described in 2nd Schedule. It is pleaded that in absence of the plaintiff, the defendants on 20-10-1997 trespassed into the suit land and started residing thereon and also constructed a small house on the suit land with a view to use it as a place for performing puja. It is further alleged that on 07-11-1997, the defendants had created an illegal and collusive deed of transfer.

Significantly, in the suit, the plaintiff did not seek any declaration for declaring the said deed of transfer as illegal, fraudulent or collusive.

The defendants while denying the allegations, stated that the projected suit land falls in the land purchased by the predecessor of the defendants and they are jointly possessing the land. It is also asserted that deceased defendant No.1 had granted permission to the villagers to construct a Sani Mandir in the Western-Northern part of the suit land in the year 1997. That apart, it is further pleaded that some land was also gifted from the purchased land for construction of Gamaria M.E. School.

On the basis of the pleadings, the following issues were framed :

1. Is there cause of action for the suit ?
2. Whether the plaintiff has right, title, interest over the S/L?
3. Whether the suit is bad for defect of necessary parties?
4. Whether the suit is properly valued and Court fees is paid thereof?
5. Whether the plaintiff is entitled to reliefs as prayed for ?.

During trial, the plaintiff had examined one witness while the defendants, though cross-examined PW 1, did not adduce any evidence.

The claim of the plaintiff is through inheritance from his father and in order to trace the source of title of his father, the plaintiff had exhibited final Khatian No.1 as Exhibit-1. The learned Courts below had recorded the finding that Dag No. 187 was not mentioned in Exhibit-1 though there is Dag No. 187/6 02, in which the name of the father of the plaintiff did not figure. 1st Schedule to the plaint, it may be recalled, mentions Dag No. 187. The learned Courts below found that Exhibits- 2 to 6 are not documents of title and as such was of the opinion that the same do not establish title of the father of the plaintiff.

Perusal of the pleading and the tenor of the argument put forward by the learned counsel for the appellant before this Court would go to show that Exhibit -1 was the sheet-anchor of the plaintiff's case. Both the learned Courts below concurrently found that Exhibit-1, does not establish any right, right or interest of the father of the plaintiff.

Mr. Rajbarbhuiyan, learned counsel for the appellant submits that though it was pleaded by the defendants that they had purchased the suit land, they did not adduce any evidence to prove such purchase and, therefore, the learned Courts below committed wrong in dismissing the suit of the plaintiff. The plaintiff has to prove his case. Even if there is any laches on the part of the defendant, the plaintiff cannot take advantage of the weakness, if any, of the defendant's case. In the instant case, the plaintiff had failed to discharge his burden and, therefore, the onus did not at all shift to the defendants. In view of the above, I am of the considered opinion that there is no merit in this appeal and accordingly, the same is dismissed.