

West Bengal Form No.3701

HIGH COURT FORM No. (J) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

District: Howrah

In the Court of the Civil Judge (Junior Division), Amta, Howrah.

Present: MD. NURJAMAN KHAN

Judgment delivered on Saturday, the 18th day of March, 2017

SUIT / CASE NO. T.S. 67 OF 2011

Sri Nemai Santra and others

Plaintiffs.

-----Versus-----

Smt. Arati Dalui and others

Defendants.

Sri Paritosh Roy

Ld. Advocate for the **Plaintiffs.**

Sri Himanshu Sinha

Ld. Advocate for the **Defendants.**

On 02.02.2017, 03.03.2017, 04.03.2017, this Suit came on
for final hearing in presence of:

And stood for consideration to this day, the court delivered the
following judgment:

This is a suit for declaration, permanent injunction and other
consequential relief, valued at Rs.110.00/-

Judgment

Plaintiffs' case:-

The factual matrix of the plaintiffs case is that the 'Ka' schedule suit property was previously belonged to Patiti Paban Banerjee who died leaving behind his six sons namely Bhisnupada, Raghunath, Kanai, Gobinda, Monilal and Shristidhar and three daughters namely Bhabani Mukherjee, Sunity Mukherjee and Protima Chatterjee and his wife Provabati Banerjee as his legal heirs and successors in respect of the schedule noted property. While owning and possessing 1/10 share, Shristidhar Banerjee died leaving behind his wife namely Sandhya Banerjee, three daughters namely Maitryee, Shrabanti and Sumitra and his mother namely Porvabati Banerjee as his legal heirs. Thereafter Provabati Banerjee while owning and possessing her share died leaving behind his five sons and the legal representatives of his predeceased-son namely Shristidhar Banerjee and her three daughters as her legal heirs and successors. Protima Chatterjee died issue less leaving behind her five brothers and two sisters and the legal representative of her predeceased-brother namely Shristidhar Banerjee. The aforementioned five sons and two daughters and the legal representatives of Shristidhar Banerjee got 1/8th share each in respect of 'Ka' schedule property. Thereafter the aforementioned five sons of Patitpaban Banerjee jointly transferred the 'Ka' schedule suit property in favour of plaintiff No. 1 – 4 and in favour of the father and mother of plaintiff No.5 to 8. The plaintiff further submitted that at the time of registration of said deed of sale, the sons of Patitpaban Banerjee disclosed that they are the exclusive owner and possessor of 16 anas share of the suit property. The plaintiff No. 1 to 4 and Krishnapada Santra and Pachanda Santra (the father and mother of plaintiff

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No. 5 to 8) were purchased the 'Ka' schedule property by dint of registered deed of sale vide No. 1605 dated 02.05.1991 at the fair consideration price of Rs.1000/-. The plaintiffs are in possession since the very inception of said purchase. Thereafter Krishnapada Santra and Pachanda Santra died leaving behind their four sons' viz. Plaintiff No. 9 to 12 as their legal heirs and successors. Thereafter the aforementioned two daughters of said Patitpaban Banerjee namely Bhawani Mukherjee and Sunity Mukherjee while claimed their share in the 'Ka' schedule property on the basis of inheritance from their father, the plaintiff No. 8 and plaintiff No. 13 & 14 were jointly purchased their share on the strength of registered deed of sale vide No. 339 dated 25.08.2010. Since purchase, the plaintiff No. 8, 13 & 14 has been possessed the share of their purchased land in 'Ka' schedule property by doing various overt acts. Now the plaintiffs are possesses the suit property for their dwelling purposes as of right without any interruption from any corner. The plaintiff submitted that the defendant No. 1 to 4 on 24.07.2010 for the first tie disclosed that they have purchased the suit property from the legal heirs of Patitpaban Banerjee, hence they would take the possession of 'Ka' schedule property forcefully and they would also dispossesses the plaintiff from their peaceful possession over the 'Ka' schedule suit property. On 26.07.2010, the plaintiffs obtained the certified copy of registered deed of sale vide No. 2948 of 2010 and for the first time came to know that the legal heirs of Patitpaban Banerjee transferred the 'Ka' schedule property again in favour of the defendants. The plaintiff submitted that the said deed of sale vide No. 2948 of 2010 is illegal void and inoperative. Hence finding no other alternative the plaintiff filed this instant

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suit and praying for declaration that plaintiffs have right title interest and possession over the 'Ka' schedule suit property and a declaration that the

registered deed vide No. 2948 dated 23-07-10 is void, illegal and inoperative and not binding upon the plaintiffs and for permanent injunction against the defendants.

Defendant's case:-

The defendant duly contested the suit by filing written statement and denied all the material allegation contained in the plaint, contending inter alia, that the plaintiffs never purchased the 'Ka' schedule property from the original owners of the same, as such the plaintiffs never possessed the 'Ka' schedule property. The defendant submitted that said Raghunath Banerjee, Kanai Banerjee and Gobinda Banerjee, Monilal Banerjee, Shristidhar Banerjee, Provabati Banerjee had been possessed the suit property till 23.07.2010 and their name had duly recorded under LR khatian No. 3371, 620, 1037, 3049, 4486, 2296 and the same was finally published. The aforesaid original owners of the 'Ka' schedule property had been possessed the suit pond by cultivating and catching the fishes of the same till 23.07.2010. The defendant further submitted that after seeing the record of right in the name of their vendors and after seeing their physical possession over the 'Ka' schedule suit property, they have purchased the 2 ½ decimals land by dint of registered deed of sale vide No. 2948 dated 23.07.2010 at consideration price of Rs. 35174/- and started possessing the 2 ½ decimals land by doing various overt acts. The defendant submitted that the plaintiffs have no right title and interest over the said 2 ½ decimals

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land of 'Ka' schedule property and the suit is liable to be dismissed with cost.

-: ISSUES :-

On the basis of the pleadings of the parties, the following issues have been framed:

1. Whether the suit is maintainable in its present form and in law?
2. Whether the suit is bad for defect of parties?
3. Whether the suit is barred by the law of limitation?
4. Whether the plaintiffs have any cause of action to file this present suit?
5. Whether the suit is barred u/S 34 of the Specific Relief Act?
6. Whether the plaintiffs have right, title and interest over 'Ka' schedule suit property?
7. Whether the deed being No. 2948 for the year 2010, registered at A.D.S.R. office at Amta is illegal, invalid and void ab-initio and not binding upon the plaintiff?
8. Whether the plaintiffs are entitled to get the order of permanent injunction against the defendants?
9. Whether the plaintiffs are entitled to get the relief or reliefs as prayed for?
10. To what other relief or reliefs, are the plaintiffs, entitled as per law and equity?

EVIDENCE ADDUCED ON RECORD

The Plaintiff No. 1 namely Sri Nimai Santra deposed as PW-1, one Shri Sanat Hazra deposed as PW-2 in this suit and on the other hand defendant No. 4 namely Milon Dalui deposed as DW-1, one Chandi Charan Malik deposed as DW- 2 and Gobindalal Banerjee deposed and DW-3.

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In the instant suit the following documents have been marked exhibits for the plaintiffs:-

Ext. – 1– One original sale deed being No. 1605 for the year 1991.

Ext. - 2 – One original sale deed being No. 3397 for the year 2010.

Ext. - 3 – One certified copy of the sale deed being No.2185 for the year 2010.

Ext. - 4 – L.R. information slip of plot No. 3003 of mouja Amta.

Ext. - 5 (collectively) – Government rent receipts.

In the instant suit the following documents have been marked exhibits for the defendants:-

1. Ext. - A – Original registered deed of sale being No. 2948 dated 23.07.2010.

2.Ext. - B – Plot information slip of hal plot No. 3003, sabek No. 2723 issued on 30.06.2010 of mouja Amta.

DECISION WITH REASONS

Issue no. 1 – 5

These issues are taken up together for the sake of brevity and convenience of discussion.

Plaintiffs have filed the instant suit for declaration and permanent injunction. In course of argument; Ld. Advocates for both sides did not lay

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any special emphasis or agitate these issues. Sitting in this basilica it is rather my incumbent duty to inspect whether the suit filed by the plaintiff is legally ratified or not. It is established principle that ouster of Civil Court's jurisdiction shall not be readily inferred and the presumption should be in favour of the jurisdiction. Accordingly, the Court has carefully scrutinized the evidence and other materials on record and from nowhere it can be

inferred with the authority that the filing of present suit is barred in law for the time being in force and there is no other provision of law which would render the present suit as not maintainable.

On careful perusal of the case record it appears that the plaintiffs have sufficient cause of action to file the suit which has been instituted well within the time and which also does not transpire from the record that the suit is barred by the principle of waiver, estoppels and acquiescence. From careful of perusal pleadings of the plaintiff it also appears to this court that the suit is not bad for defect of parties and the suit is also not hit by Section 34 of specific Relief Act or by the provisions of any Acts.

Accordingly, the aforesaid issues are discussed and decided in favour of the present plaintiffs and accordingly these issues are disposed of.

Issue No. 6 to 10:-

These issues are taken up together for brevity and precession since these issues are interrelated and interdependent and also for the purpose of avoiding the repetition of facts. The specific case of the plaintiff is that they

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have purchased the 4 decimals land recorded in dag No. 2723 appertaining to khatian No. 1049 morefully described in schedule 'Ka' to the plaint from Bishnupada, Raghunath, Kanai, Gobinda, Monilal and from the legal representative of Shristidhar Banerjee by dint of registered deed of sale vide No. 1605 dated 02.05.1991. At the time of registration of said deed of sale in favour of the plaintiffs, their aforementioned vendors disclosed that they are the owner and possessor of 16 anas share and their two sisters had relinquished their share in favour of the aforementioned sons of Paitpaban

Banerjee. But subsequently the said two daughters of Patitpaban Banerjee, Bhawani Mukherjee and Sunity Mukherjee claimed their share in the 'Ka' schedule suit property on the basis of law of inheritance from their father, hence the plaintiff No. 8 and plaintiff No. 13 & 14 were jointly purchased the share of the aforesaid two daughters of Patitpaban Banerjee by dint of registered deed of sale vide No. 339 dated 25.08.2010. The plaintiff further submitted that they are in possession since long.

The plaintiffs in order to prove their case have adduced as much as two witnesses on behalf of them. In order to prove their title over the 'Ka' schedule suit property, the plaintiffs have produced the original sale deed being No. 1605 for the year 1991 executed by Bishnupada Banerjee and others in favour of Shri Krishna Santra and others being marked as Exbt.-1. On careful perusal of the Exbt.-1 i.e. sale deed vide No. 1605 of 1991 it appears that the five sons of Patitpaban Banerjee namely Bishnupada Banerjee, Raghunath Banerjee, Kanai Banerjee, Gobinda Banerjee, Monilal Banerjee and the legal representatives of Shristidhar Banerjee had

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transferred the 4 decimals dova land comprised in dag No. 2723 appertaining to khatian No. 1049 in favour of Krishnapada Santra (the father of plaintiff No. 10 to 12), Pochondo Santra (mother of plaintiff No. 5 to 12), Nemai Santra (plaintiff No. 1), Pusporani Santra (plaintiff No. 2), Bishwanath Santra (plaintiff No. 3) and Naren Santra (plaintiff No. 4). From the recital part of Exbt.-1 i.e. sale deed vide No. 1605 of 1991 it appears that the vendors of the said deed had sold out the 16 anas share i.e. 4 decimals dova land of dag No. 2723 at the consideration price of Rs.1000/- to the plaintiff. From the schedule of the Exbt.-1 it appears that the vendors of the

said deed have sold out the property measuring about 4 decimals dova land comprised in dag No. 2723 appertaining to khatian No. 1049 in favour of the plaintiff No. 1 to 4 and in favour of father and mother of plaintiff No. 5 to 12.

The plaintiff in order to prove the fact that, subsequently, the plaintiff No. 8 and plaintiff No. 13 & 14 jointly purchased the share of the two living daughters of Patitpaban Banerjee by dint of registered deed of sale vide No. 3397 dated 25.08.2010, have produced the original copy of the same, being marked as Exbt. - 2. On careful perusal of the Exbt. - 2 it appears that Smt. Bhawani Mukherjee and Smt. Sunity Mukherjee, the two daughters of Patitpaban Banerjee had transferred their share which they have got by way of inheritance from their father and mother in sabek khatian No. 1049 appertaining to sabek dag No. 2723 hal 3003 in favour of Uttam Santra, the plaintiff No. 8 and Pintu Santra (the plaintiff No. 13) and Tapan Santra (plaintiff No. 14).

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The defendant, on the other hand submitted that they have purchased the 2 ½ decimals land of 'Ka' schedule suit property from the original owners namely Raghunath Banerjee, Kanai Banerjee, Gabindalal Banerjee, Monilal Banerjee, Smt. Sandhya Banerjee wife of Shirstidhar Banerjee, Monilal Ghosh, Srabanti Paramanik and Sumitra Ganguly the druthers of Shirstidhar Banerjee after seeing the record of right and their physical possession in respect of the suit property. In order to support their contention, the defendants have filed the original registered deed of sale vide No. 2948 dated 23.07.2010 being marked as Exbt. - A. It appears that the Exbt. - A is a deed of sale executed by the four sons of Patitpaban Banerjee and legal representative of Shristidhar Banrjee in respect of the defendants.

It appears that the aforesaid four sons of Patitipaban Banerjee and the legal representative of Shristidhar Banerjee have already sold out four decimals land of 'ka' schedule property in favour of the plaintiff No. 1 to 4 and 5 to 12. On careful comparison of schedule of both the two deeds, it appears that the suit property is same-self. It appears that the vendors of Exbt. – 1 had been sold out the entire four decimals land in favour of the plaintiffs although they had 2 ½ decimals land in the 'Ka' schedule suit property, hence to rectify the error, the plaintiffs have subsequently purchased the share of their two sisters. On careful perusal of the record of right of the suit property it appears that although the plaintiffs have purchased the share of the sons of Patitpaban Banerjee but their name had not been recorded in the LR record of right in respect of the suit property hence the defendants taking the advantage of erroneous record of right purchased the 2 ½ decimals land

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of 'Ka' schedule suit property from the sons of Lt. Patitpaban Banerjee. In order to corroborate the fact that the plaintiffs all along in possession of the 4 decimals land of 'Ka' schedule property, they have produced 55 Government rent receipts in respect of the 'Ka' schedule suit property.

The defendant in order to prove the validity and genuineness of their purchased deed, have adduced the DW-3 namely Gabindalal Banerjee, one of the sons of Patitpaban Banerjee, who is one of the executors of both the two deeds. During his examination in chief he stated that they have sold out the 2 ½ decimals land of 'Ka' schedule property to the defendants. But during his cross-examination he admits the validity and genuineness of the Exbt.-1 i.e. deed being No. 1605 of 1991 executed by them in favour of the plaintiffs. In his cross-examination he deposed that after the demise of his

father the six sons and three daughters of Patitpaban Banerjee inherited the 'Ka' schedule suit property along with the wife of Patitpaban Banerjee. Shristidhar Banerjee died leaving behind his wife and three daughters. During the cross-examination the deed being No. 1605 dated 02.05.1991 i.e. Exbt. - 1 is shown to the witness. After seeing the Exbt.- 1 i.e. deed vide No. 1605, the DW - 3 stated that the said deed has been executed by them in favour of Krishnapada Santra and others. He further deposed that "I put my signature in the said deed at the time of registration of the same". The other executants i.e. my brothers and the legal heirs of my predeceased elder brother namely Shristidhar Banerjee also put their signature in the said deed. After receiving the consideration money of Rs. 1000/- as per the then

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market value of the suit property, we had executed the sale deed in favour of Krishnapada Santra and others. Krishnapada Santra, Nemai Santra, Pusporani Santra, Bishwanath Santra, Naren Santra and Pochondo Santra have purchased the suit property from us by virtue of said deed had been possessed the same since the very inception of registration of the deed. Before transfer of said suit pond, we had possessed the same exclusively to the extent of 16 anas share and the deed being No. 1605 dated 06.05.1991 is a sale deed and not a mortgage deed. Hence, it appears that during the cross-examination of DW-3 he admits the validity and genuineness of Exbt. - 1 i.e. deed vide No. 1605 of 1991. It appears that although the PW-3 is called by the defendant to depose in this suit but he corroborates the fact of the plaintiff's case and he is not declare as hostile witness by the defendant. It is the cardinal principle of law that the owner of the land can only entitled to transfer the same to the extent of his share and not more than that. Hence in the eyes of law the deed vide No. 1605 dated 02.05.1991 is valid to the extent of share of the vendors in respect of the schedule mentioned property

of the deed. Subsequently the plaintiff had also purchased the remaining share of the 'Ka' schedule suit property from the two daughter of Patitpaban Banerjee by dint of registered deed of sale vide No. 3397 of 2010.

In my considered view the Section 8 of T.P. provides the incidents of operation of transfer. Which is read as follows- Operation of transfer.—
“Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

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Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.”

The intention of the vendors of the Exbt-1 can be gathered from the true construction of the deed.

Construction of deeds:-

A document has to be construed as a whole. Real intention of the parties has to be gathered, not merely from what ex facie is stated as the description of the property in the schedule, but from the totality for the

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recitals in the document. Description of the property in the schedule to the document could not be given any overriding importance over the actual area specified in the document as the extent of the land determined upon measurement. The construction of a document as regards the legal effects will only arise where the document is an instrument of title, or is a contract, or is the direct foundation of legal rights.

From the careful perusal of the Exbt-1, it appears that the vendors of the same intends to passes forthwith to the transferee(plaintiffs) all the interest which the transferor (vendors) is then capable of passing in the property and in the legal incidents thereof.

The defendant submitted that after seeing the record of right in the name of their vendors and after seeing their physical possession over the 'Ka' schedule suit property, they have purchased the 2 ½ decimals land from their vendors. In my considered view the plea taken by the defendant that after seeing the record of right in the name of their vendors and after seeing their physical possession over the 'Ka' schedule suit property, they have purchased suit property is not sufficient in the eyes of Law. The position of

law is that he should be taken reasonable care and made due enquiry regarding the title of his vendors.

Reasonable Care:-

Reasonable care has been explained to mean such care as an ordinary man of business would take. Reasonable care is to be expected from

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everyone who claims to have purchased free from a really existing right. Revenue records are not documents of title, and it is not safe to rely on the entry of the transferor's name in the revenue registers. A transferee who does so and omits to inquire into title is not protected by this section. This also applies to entries in Municipal and Police registers. Mere entrusting of an inquiry to a solicitor does not amount to reasonable care. A discrepancy in the safe certificate between the description of the property by its name and delineation by boundaries ought to put the transferee on guard.

Possession and entries in revenue records :-

It may be that on the facts of a case, it is sufficient if the purchaser ascertains that his vendor is in possession and is entered in the revenue records, but this does not dispense with the duty to make the usual inquiry into title.

Inquiries into title :-

That transferee must show that he has made the usual inquiry into title; otherwise he is not entitled to the protection of this section. In this connection, the courts have frequently quoted a well-known passage from Lord Lindley's judgments in Bailey v Barnes.

It appears that the defendants did not make the due inquiry into title of their vendors; hence they are not entitled to get any relief from the Court of Law.

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The plaintiffs have been able to prove their case by documents and evidences thereby leaving no doubt in the mind of court that the plaintiffs are liable to get a decree as prayed for. Therefore, all these issues are decided in favour of the plaintiffs and as such they are entitled to get decree as prayed for.

And, as a result the suit succeeds.

Court fee paid is correct.

Hence it is,

ORDERED

That the suit be and the same is decreed on contest against the defendants but without any order as to cost.

Plaintiffs do get a decree of declaration that they have right title interest and possession over the 'Ka' schedule suit property. Accordingly, the deed vide No. 2948 dated 23.07.2010 have no legal force and the same is declared as inoperative.

The plaintiff do get a further decree of permanent injunction against the defendants in respect of the suit property. The defendants are hereby restrained from entering to the 'Ka' schedule suit property and / or from changing the nature and character of the same.

Thus the other reliefs are hereby refused.

Let a note be given in the relevant suit register.

Civil Judge (Jr. Divn.)
Amta, Howrah

(MD. NURJAMAN KHAN)
Civil Judge (Jr. Divn.)
Amta, Howrah