

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).22349/2003

(From the judgement and order dated 31/03/2003 in SA No. 470/1997 of The HIGH COURT OF CALCUTTA)

SULTAN AHMED SARKAR

Petitioner(s)

VERSUS

AMITABHA SINGHA ROY & ORS.

Respondent(s)

(With prayer for interim relief and office report)

(FOR FINAL DISPOSAL)

Date: 16/03/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr. Piyush K. Roy, Adv.

Mr. G. Ramakrishna Prasad, Adv.

For Respondent(s)

Mr. Deba Prasad Mukherjee, Adv.

Mrs. Nandini Sen, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

(Meenu Sethi)

(Pushap Lata Bhardwaj)

Court Master

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1438 OF 2007

(Arising out of SLP(C) No.22349/2003)

Sultan Ahmed Sarkar

...Appellant

Versus

Amitabha Singha Roy & Ors. ...Respondents

ORDER

Leave granted.

Plaintiff No.2 is the appellant before us. In the Cadastal Survey Settlement Record of Rights, names of the original plaintiffs were recorded whereas the names of the respondents' predecessor-in-interest were recorded as having the interest in 'raiyat sthitiban' in the Revisional Survey Settlement record-of-rights. However, the names of respondents were entered into. Indisputably, Revisional Settlement record-of-rights was prepared in the year 1956.

Plaintiffs-appellants relying on or on the basis of an oral family settlement by way of partition, inter-se, between the co-sharers filed a Suit for declaration that the entry made in the said Revisional Survey Settlement Record-of-Rights was wrong. The Trial Court decreed the Suit. The First Appellate Court, however, reversed the said finding opining that the appellant herein had not been able to rebut the legal presumption of correctness arising out of the entries made in the Revisional Settlement Record-of-Rights in terms of the Sub-section (2) of Section 44 of the West Bengal Estates Acquisition Act, 1953 holding:

" ...Of the two C.S. and R.S. Record the R.S. Record of much later date is to prevail normally. Also the entries in the R.S. Record-of-rights have clearly a presumption of correctness and unless and until this presumption is rebutted by sufficient evidence the R.S. Record should hold good. As the defendant No.1-Appellant relied on this entries in the R.S. Record-of-Rights, the learned munsif came to the conclusion that the defendant No.1 thereby admitted the plaintiffs as his landlords and that in this way the plaintiffs title had been proved and by reasoning in this way the learned Munsif observed in the circumstances it was now for the defendant No.1 to prove that he had taken any such Korfa tenancy settlement from the plaintiffs and as the defendant No.3 had failed to produce any scrap of paper or oral evidence in support of this Korfa settlement, he came to the conclusion that the R.S. record was without any basis. But this sort of reasoning in the instant case does not appear to be sound. In the written statement the defendant No.1 has

nowhere admitted the plaintiffs title or admitted that he took Korfa Settlement from the plaintiffs or Ahmad Sarkar. It cannot, therefore, be said that the defendant No.1 in any way admitted the plaintiffs title..."

Reliance has also been placed by the First Appellate Court upon Sub Section(4) of Section 44 of the West Bengal Estates Acquisition Act, 1953. It also arrived at its findings on the basis of the oral evidences adduced by the parties to arrive at a finding that having regard to the the nature of the land, the appellant has not been able to prove that he had exercised any adverse possession over the lands in question.

The High Court at the initial stage did not form any substantial question of law. It admitted the appeal without formulating any substantial question of law. At the time of hearing of the appeal, however, the parties were heard at length for the purpose of ascertaining as to whether their exists any substantial question of law or not. The High Court by reason of the impugned judgment upon consideration of the findings arrived at by the Court of First Appeal, held that no substantial question of law had arisen for its consideration.

Mr.Roy, learned counsel appearing on behalf of the appellant would submit that interpretation of a document touching the title of a property was itself a substantial

question of law. Reliance in this behalf has been placed on

Neelu Narayani(dead) through Lrs. & Ors. Vs. Lakshmanan

(d) through Lrs.& Ors - (1999) 9 SCC 237 and Yadav Rao

Dajiba Shrawane Vs.Nanilal Harakchand Shah & Ors-2002 6

SCC 404 . There cannot be any doubt whatsoever that in

view the provisions of W.B.E.A. Act in terms whereof an

entry made in the Cadastal Survey Settlement Record-of-

Rights vis-a-vis an entry in the Revisional Settlement record-

of rights, the latter will prevail. There cannot be any doubt

whatsoever that such a presumption would be a rebuttal

one but as to whether the party to the suit been able to rebut

the presumption arising out of such an entry would

essentially be a question of fact.

We have noticed hereinbefore that the materials on

record have been gone into at some details even by the High

Court for the

purpose of arriving at a decision that the decision of the

First Appeallant Court was based upon the finding of fact.

We are, therefore, of the opinion that the decisions

relied upon by Mr.Roy, learned counsel have no application

to the facts of the present case.

For the aforementioned reasons, we do not find any

merit in this appeal. The appeal is dismissed.

..J.

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[ S.B. SINHA ]  
.....

...J.

[ MARKANDEY

KATJU]

New Delhi,

March 16, 2007