

Tripura High Court

Sri Rashamoy Ghosh vs Smt. Swapna Ghosh on 9 March, 2022

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HIGH COURT OF TRIPURA
AGARTALA
RSA 6 of 2019

1. Sri Rashamoy Ghosh,
son of late Ramesh Ghosh, resident of Laljuri, P.O. Msauli,
P.S. Kumarghat, District- Unakoti, Tripura
2. Sri Sukhamoy Ghosh,
son of late Ramesh Ghosh, resident of Laljuri, P.O. Msauli,
P.S. Kumarghat, District- Unakoti, Tripura

... Defendant-Appellants

VERSUS

1. Smt. Swapna Ghosh,
wife of late Ajit Ghosh, resident of Sanicherra, P.S. Churaibari,
District- North Tripura, now residing at Laljuri (East), P.S. Kumarghat,
District- Unakoti, Tripura
2. Sri Indrajit Ghosh,
son of late Ajit Ghosh, resident of Sanicherra, P.S. Churaibari,
District- North Tripura, now residing at Laljuri (East), P.S. Kumarghat,
District- Unakoti, Tripura

Plaintiff-Respondents

3. Sri Gobinda Gope, son of unknown, resident of Laljuri (East), P.S. Kumarghat, District- Unakoti, Tripura ... Defendant-Pro-Respondents For Appellant (s) : Mr. SS Debnath, Advocate For Respondent (s) : Mr. P. Roy Barman, Sr. Advocate Mr. S. Bhattacharjee, Advocate Mr. K. Nath, Advocate Date of hearing : 21.02.2022 Date of delivery of judgment : 09.03.2022 and order Whether fit for reporting : Yes HON'BLE MR. JUSTICE ARINDAM LODH JUDGMENT & ORDER

1. At the request of learned counsel appearing for the appellants, the following substantial questions of law have been formulated:

(i) Whether the findings given by the courts below while deciding the plaintiff's claim that they are legal heirs of deceased owner of the suit land is perverse?

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(ii) Whether the findings given by the learned appellate court while deciding the issue no. (v) i.e. story of possession and dispossession over the suit land are perverse and based on no evidence?

(iii) Whether the certificates of death of late Nibashi Ghosh and Ajit Ghosh are valid in the eye of law in view of sub-section (3) of Section 13 of the Registration of Births and Deaths Act, 1969?

2. Heard Mr. SS Debnath, learned counsel for the appellant. Also heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee and Mr. K. Nath, learned counsel for the respondents.

3. This is a second appeal preferred by the original defendants challenging the judgment and decree dated 01.06.2018 passed by the learned District Judge, Unakoti Judicial District, Kailasahar in case No. Title Appeal 20 of 2013 arising out of the judgment and decree dated 27.06.2013 passed by the learned Civil Judge, Senior Division, Kailasahar in case No. Title Suit no. 45 of 2012.

4. In brief, one late Nibashi Rani Ghosh @ Nibashi Ghosh (here-in-after referred to as "Nibashi") was the original owner of the suit land. She had only one son, namely, Ajit Ghosh. Both of them died. After their death, the respondents no. 1 and 2 i.e. the plaintiffs have become the owner of the suit land by way of inheritance. Respondents no. 1 and 2 are the daughter-in-law and grandson of Nibashi being the wife and son of late Ajit Ghosh, respectively. According to the respondents no. 1 and 2, the appellants had entered into the suit land illegally and started to forcibly possess the suit Page 3 land since 22nd October, 2006, which they came to know through their relative. They requested the appellants to handover the possession of the land, but, the appellants had refused. Hence, the cause of action for filing the present suit arose.

5. The appellant-defendants [here-in-after referred to as "defendants"] after receipt of summons appeared and contested the suit by filing written statement. In the written statement, the defendants have stated that the plaintiffs i.e. the respondents no. 1 and 2 [here-in-after referred to as the "plaintiffs"], are not the rightful owners of the suit land, and further Nibashi Rani Ghosh was not their mother-in-law. It is the case of the defendants that Nibashi had transferred the suit land in favour of the defendants by way of an unregistered Sale Deed and permitted them to possess the same. The defendants also have challenged the survival and death certificate of Nibashi Rani Ghosh as well as survival certificate of Ajit Ghosh, on the ground that those were not issued in accordance with the Registration of Births and Deaths Act, 1969 [for short "Act, 1969"] where Section 13 stipulates that any birth or death which has not been registered within one year of its occurrence shall be registered only on an order made by a Magistrate of the 1st class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee. In the instant case, the plaintiffs have produced the death certificates of late Nibashi Rani Ghosh and late Ajit Ghosh which were not issued by the Page 4 Magistrate, 1st class as per sub-section (3) of Section 13 of the said Act, 1969, and it was issued by the BDO [Block Development Officer]. The defendants have further stated that they have been possessing the land for the last 20/21 years i.e. since 1991 when the original owner Nibashi Rani Ghosh had put them into possession after execution of an unregistered Sale Deed (Exbt. E), and also constructed permanent structure over the suit land. For that reason, the defendants have stated that the cause of action of instituting the present suit has falsely been stated by the plaintiffs that they dispossessed the plaintiffs from the suit land in the month of October, 2006. According to the defendants, it is a manufactured and concocted story.

6. After exchange of pleadings, as stated above, the learned trial court had framed the following issues:

- "(i) Is there no cause of action for the suit?
- (ii) Is the suit not maintainable in its present form?
- (iii) Is the suit barred by law of limitation?
- (iv) Whether the plaintiffs have their right, title and interest over the suit property?
- (v) Whether the story of possession and dispossession over the suit property as alleged by the plaintiffs is true?
- (vi) Whether the plaintiffs are entitled to get decree as prayed for?
- (vii) Any other relief/relieve?"

7. In support of their statements made in the plaint, the plaintiffs examined as many as three witnesses including herself. They brought on record Khatian no. 258 as Exhibit-1. On the other hand, the defendants examined Page 5 as many as seven witnesses and introduced the following documents : (i) Family Ration card No. 119 as Exbt. A; (ii) Electricity Consumer pass book as Exbt. B; (iii) Saving bank pass book as Exbt. C; (iv) Family Ration card no. 24 as Exbt. D; (v) Unregistered Sale Deed as Exbt. E.

8. While dealing with the first issue regarding cause of action, the learned trial court held thus:-

"Issue no.-1, for findings

11. The onus of proving this issue was upon the defendants. Defendants challenge that the suit has no cause of action. Plaintiffs in their plaint at para-5 have stated that the cause of action for the suit arose on 22 nd October, 2006 when the defendants most illegally dispossessed the plaintiffs from the suit land. As per pleading of the plaintiffs, they claim the suit lands on the basis of their title having been inherited from their predecessors deceased Nibashi Rani Ghosh and Ajit Ghosh. They in their plaint at para 3 have clearly recited that the defendant no. 3 with connivance with defendant nos. 1 and 2 forcibly dispossessed the plaintiffs from the suit land and raised construction there over. Defendants have contested their suit denying inter alia all the contentions of the plaintiffs and stated that they are owners of the suit land by way of purchase. It appears that plaintiffs have set forth the grounds in their plaint as of cause of action of the suit. They have also placed materials like record of rights of the suit lands in the name of their predecessors and also oral evidence as to how their right have been infringed and for which immediate occasion for the action required from the court of law. I notice, plaintiffs have placed sufficient materials on records asking the court to arrive conclusion in their favour. Apart that, the fact remains those defendants have contested the suit denying the title of the plaintiffs. In such circumstances, it cannot be said that the suit lacks of cause of action. I find there

is cause of action for the suit. Resultantly, I answer this issue in favour of the plaintiffs and against the defendants."

9. Issues no. (ii), (iii) and (iv) have also been decided in favour of the plaintiffs, but, the learned trial court had decided the issue no. (v) against the plaintiffs. Issue no. (vi) has been decided in favour of the plaintiffs.

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10. While rejecting the reliefs in favour of the plaintiffs regarding issue no.

(v) i.e. whether the story of possession and dispossession over the suit property, as alleged by the plaintiffs, is true or not, the learned trial court held that the plaintiffs have failed to establish the factum of possession and dispossession. It has been categorically observed by the learned trial court that the plaintiffs have been able to establish the fact that they are the legal heirs of late Ajit Ghosh and also successors of late Nibashi Rani Ghosh and they have acquired right, title and interest over the suit property by way of inheritance. Accordingly, the suit was decreed by the learned trial court to the extent of declaring title of the plaintiffs over the suit, but, not the relief of recovery of khas possession by way of evicting the defendants from the suit land.

11. Against this finding regarding issue no. (v), the plaintiffs preferred an appeal before the learned District Judge. Learned District Judge has dealt with this issue and held that the defendants were the permissive possessor and permissive possessor cannot claim any right, title and interest. Further, it was held that a person having right, title and interest over a piece of land is entitled to evict such permissive possessor from the land in question. Accordingly, learned District Judge granted the reliefs entitling the plaintiffs to recover the possession of the suit land by way of evicting the defendants therefrom. Against this finding regarding issue no. (v) as framed Page 7 by the learned trial court and decided by the first appellate court, the defendants have preferred the instant appeal.

12. Mr. SS Debnath, learned counsel appearing for the defendant- appellants submits that the plaintiffs have intentionally suppressed the material fact that the defendants had forcibly entered into the suit land in the month of October, 2006 and thus dispossessed the plaintiffs. Secondly, Mr. Debnath, learned counsel has urged that there was no cause of action of the suit. Thirdly, learned counsel for the defendants has submitted that they introduced the certified copy of the death certificate of both late Nibashi Rani Ghosh and late Ajit Ghosh by way of adducing additional evidence before the learned first appellate court wherefrom it reveals that those certificates had been issued after expiry of 12 months and in violation of sub-section (3) of Section 13 of the Registration of Deaths and Births Act, 1969. Giving much emphasis on the said death certificates, Mr. Debnath, learned counsel has tried to persuade this court that the plaintiffs are not the legal heirs of original owner, late Nibashi Rani Ghosh.

13. To resist the aforesaid submission of Mr. Debnath, learned counsel for the defendants, Mr. P. Roy Barman, learned senior counsel has submitted that the trial court had decided all the issues

infavour of the plaintiff except issue no. (v) where other issues including the cause of action had been thoroughly dealt with by the learned trial court. The Defendants did not prefer any appeal challenging the decision and decree, as passed by the Page 8 learned trial court in favour of the plaintiffs. It is the plaintiffs who challenged the decision of the learned trial court regarding issue no. (v) which deals with the factum of possession and dispossession of the plaintiffs over the suit property.

14. I have considered the aforesaid submissions advanced by the learned counsel appearing for the parties to the lis.

15. In my opinion, since the defendants did not challenge the findings of the learned trial court regarding issues no. (i), (ii), (iii), (iv) and (vi), which were decided in favour of the plaintiffs by way of filing appeal before the first appellate court, the defendants have no right to challenge those findings in the second appeal. Had the defendants any grievance over the findings and decision of the learned trial court regarding those issues, then, he must have challenged those findings by way of filing appeal before the District Judge under Section 96 of the Code of Civil Procedure, 1908, but, the defendants did not do so. Thus, those reliefs granted by the trial court in favour of the plaintiffs have attained finality. Hence, I repel the submission of learned counsel appearing for the appellants.

16. Now coming to the issue regarding the factum of possession and dispossession of the plaintiffs from the suit land. It is seen that admittedly the defendants had started possessing the suit land on the strength of unregistered Sale Deed (Exbt. E), which was sold by late Nibashi Rani Page 9 Ghosh infavour of them. Unregistered Sale Deed cannot be received in evidence to prove the sale transaction in view of section 54 of the Transfer of Property Act, 1882, and Section 17 (1)(b) and 49(c) of the Registration Act, 1908, since the proviso of section 49(c) will not be attracted in the present case being the suit is not suit for specific performance of contract instituted by the defendants. Another important feature is that the defendants had started to possess the suit land on the strength of this unregistered Sale Deed that means late Nibashi Rani Ghosh had permitted them to possess the suit land. The defendants had not acquired any title by dint of the said Sale Deed (Exbt. E). It may be a document which can be used for collateral purpose establishing the plea that they have been possessing the suit land since the date of such execution of the unregistered Sale Deed (Exbt. E), but, it did not confer title upon the defendants. In this situation, when the plaintiffs have been able to prove their right, title and interest over the suit property, which they have acquired by way of inheritance, have the right to evict the defendants in accordance with law and for that purpose they have instituted the present suit.

17. The cause of action which the plaintiffs have described in their plaint cannot be said to be suffered from suppression of material fact for the reason that the plaintiff had to plead and prove his own case, and thereafter, onus shifts upon the defendant to place his evidence to controvert the evidence of the plaintiffs. The defendants have not raised any plea of Page 10 adverse possession. Their contentions are that they had been put in possession by Nibashi Rani Ghosh on the strength of an unregistered Sale Deed which cannot confer title. As I have already held that unregistered Sale Deed cannot be received in evidence as a document of title, it only implies that the defendants have been possessing the suit land on mere permission of late Nibashi Rani Ghosh. They cannot claim

title over the suit land on the basis of that unregistered Sale Deed.

18. Next, the plaintiffs have instituted the suit claiming their right, title, interest over the suit property which they have acquired by way of inheritance and being the rightful owner, they have every right to lawfully evict the defendants because late Nibashi Rani Ghosh was the original owner of the suit land and the plaintiffs being the wife and son of late Ajit Ghosh who is the only son of late Nibashi Rani Ghosh have acquired the right, title and interest over the suit property.

19. I find no error of law in the findings of the learned first appellate court wherein it is held that the defendants are mere permissive possessor of the suit property and they are liable to be evicted.

20. Next, coming to the third substantial question of law as to whether death certificate issued after expiry of 12 months by the concerned BDO is legally valid or not.

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21. Section 13 of the Registration of Births and Deaths Act, 1969 [here-in- after referred to as the "Act, 1969"] is relevant herein, which is reproduced here-in-below:

"13. Delayed registration of births and deaths.--

(1) Any birth of which information is given to the Registrar after the expiry of the period specified therefor; but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee. (4) The provisions of this section shall without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action."

22. On perusal of the written statement, I find that the defence never raised this issue before the trial court and no issue was also framed in this regard.

23. In my opinion sub-section (3) of Section 13 of the Act, will only arise in case of any dispute between the birth or death of a person. The legislature by incorporating the said provision under

sub-section (3) of Section 13 has empowered the Magistrates, 1st class to adjudicate the dispute in regard to birth or death. In natural course, every occurrence of birth or death would be registered as soon as the person concern is born or dies, however, filing of such application may not be made within one year Page 12 when there are disputes about the occurrence of birth or death or out of sheer negligence or innocence or for any other reasons.

24. In this circumstance, sub-section (3) of Section 13 of the Act, cannot be said to be a mandatory, rather, in my opinion, it should be directory. Even entry of the occurrence of birth or death in pursuance of the direction of a Magistrate will not be a conclusive evidence of the disputed date of birth [AIR 1976 Knt 231(23)]. So, when the direction of the Magistrate will not constitute conclusive evidence and it can be challenged by any interested person in a court of law, then, such provision cannot be said to be mandatory. Furthermore, the Act, 1969 has not expressly or impliedly make the authority *functus officio* on expiry of the prescribed period embodied under sub-section (1) and (2) of the Act, 1969.

25. In the long line of decisions, the Hon'ble Supreme Court approved a passage from Crawford Statutory Construction e.516, has held that "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other". [Sarala Goel vs. Krishanchand (2009) 7 SCC 658, pp. 668, 669, para 30].

Page 13 Again for ascertaining the real intention of the Legislature, points out Subbarao, J. "the court may consider *inter alia*, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered". [Narsimhiah (K) vs. H.C. Singri Gowda, AIR 1966 SC 330, p. 332; (1964) 7 SCR 618; Mohan Singh vs. International Airport Authority, (1997) 9 SCC 132] (Ref. G.P. Singh's Principles of Statutory Interpretation, P.390 of 12th Edition, 2010). Furthermore, if by holding a particular provision of a statute mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. [Montreal Street Railway vs. Normandin, AIR 1917 PC 142, p. 144, referred to in Bishwanath Khemka v. Emperor, AIR 1945 FC 67, p. 68; State of U.P. v. Manbodhan Lal Shrivastava, AIR 1957 SC 912, p. 917; 1958 SCR 533; Kailash v. Nanhku, (2005) 4 SCC 480, p. 497; AIR 2005 SC 2441] Page 14 In the case in hand, according to me, if Section 13(3) is held to be mandatory, then, serious inconvenience will be created to innocent persons, which is not intended by the legislature in inacting the Act, 1969. In the opinion of this court, the object of the legislature is that each and every persons should register one's birth or death and to achieve this object the Act, 1969 has been enacted to regulate the registration of births and deaths for convenience of the public at large of the State. It has often been said that a mandatory enactment must be obeyed or fulfilled

exactly, but, it is sufficient if a directory enactment be obeyed or fulfilled substantially. [Punjab Cooperative Bank Ltd. vs. CIT, Lahore, AIR 1940 PC 230, p. 233; Pratap Singh vs. Srikrishna Gupta, AIR 1956 SC 140, p. 141; Dove Investment (P) Ltd. vs. Gujarat Industrial Investment Corporation (2006) 2 SCC 619 (para 47); AIR 2006 SC 1454].

26. In the instant case, the defendants have never challenged the issuance of death certificates issued by the BDO on the application of the plaintiffs. As I have said earlier, even such challenge has not been made in their written statement. Thus, the certificates of death issued by the BDO after expiry of one year cannot be held to be per se illegal being sub-section 3 of section 13 of the Act, 1969 is held to be directory one. In other words, obtaining death certificates from BDO, and not from Magistrate, according to this court, is substantial compliance of section 13 of the Act, 1969. In sequel, there is no error of law committed by the plaintiffs in obtaining Page 15 death certificates of Nibashi Rani Ghosh and Ajit Ghosh from the BDO after expiry of one year from their respective dates of deaths. It is pertinent to mention herein that BDO is one of the competent persons to issue such certificates as contemplated under Section 7 of the Act, 1969, as he comes within the purview of the terms "other local authority". Accordingly, the third substantial question of law has been answered.

27. In the light of the aforesaid discussions on both legal and factual aspects, I find no reason to interfere with the judgment and decree passed by the learned first appellate court holding that the plaintiffs are entitled to recover the suit land from the possession of defendants no. 1 and 2 and declaring the right, title and interest of the plaintiffs over the suit land. Accordingly, the judgment and decree passed by the first appellate court is hereby upheld and affirmed. The appeal is dismissed.

Draw the decree accordingly.

Send down the LCRs.

JUDGE Saikat