2024 INSC 676

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4177 OF 2024

SK. GOLAM LALCHAND ...APPELLANT(S)

VERSUS

NANDU LAL SHAW @ NAND LAL KESHRI @ NANDU LAL BAYES & ORS. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Shri Rauf Rahim, learned senior counsel for the appellant and Shri Pijush K. Roy, learned senior counsel for the respondent No. 1.

2. The dispute in this Civil Appeal is about the property measuring more or less 6 *Cottahs* 1 *Chittack* and 30 sq. ft. along with 17 rooms (about 4395 sq. ft. which comprises of tile sheds/huts) situate at 100/3 Carry Road, Howrah.

3. The plaintiff-respondent Nandu Lal claims that he had acquired rights in the aforesaid property through his father late Salik Ram along with his other brothers and that Brij Mohan, his cousin, the son of his uncle late Sita Ram, had no exclusive right to sell the property in favour of anyone much less to one of the tenants S.K. Golam Lalchand, the defendant-appellant.

4. The Title Suit No.212/2006 filed by the plaintiff-respondent Nandu Lal was dismissed by the court of first instance as he failed to prove his possession but in appeal the decree was reversed and the suit was decreed disbelieving the family settlement and holding that there was no partition of the property. The judgment and order of the First Appellate Court was affirmed by the High Court in Second Appeal.

5. Aggrieved by the judgment and order of the First Appellate Court and its affirmation by the High Court vide judgment and order dated 06.07.2021, the defendant-appellant has preferred this appeal.

6. The facts in brief are that the suit property was admittedly purchased by the two brothers namely, late

Sita Ram and late Salik Ram in 1959 from one Sahdori Dasi and both of them had equal rights in the said property.

7. It is alleged that one of the brothers late Salik Ram gifted his share in the suit property to his brother late Sita Ram who allegedly became the absolute owner of the entire property. The aforesaid late Sita Ram died intestate in 1975 leaving behind his son Brij Mohan and three daughters who appear to have relinquished their rights in the suit property in favour of their brother Brij Mohan. It is also alleged that the suit property under the family settlement was settled in favour of Brij Mohan.

8. On the other hand, plaintiff-respondent Nandu Lal alleges that his father late Salik Ram made no gift of his share in the suit property in favour of late Sita Ram and that there is no family settlement as alleged by the other side. Therefore, Brij Mohan, the son of late Sita Ram, had no right to transfer the whole of the property in favour of one of the tenants, defendant-appellant S.K. Golam Lalchand and the sale deed in this regard dated 19.05.2006 is void.

9. Upon the aforesaid sale of the entire suit property by Brij Mohan to defendant-appellant S.K. Golam Lalchand, the plaintiff-respondent Nandu Lal filed Title Suit No.212/2006 for declaration and permanent injunction claiming that the defendant-appellant S.K. Golam Lalchand could not have acquired any right, title and interest in the suit property by virtue of any sale deed, if any, executed by Brij Mohan and that he has no right to dispossess other tenants from the suit property and, therefore, he, his men and agents be restrained from taking forcible possession of any tenanted portion and from causing any disturbance in the possession of the plaintiff-respondent Nandu Lal.

10. The plaintiff-respondent Nandu Lal alleged that the suit property was admittedly the joint property of both late Sita Ram and his father late Salik Ram. Late Salik Ram never made any gift of his share in the suit property in favour of late Sita Ram. There was no family settlement settling the suit property in favour of Brij Mohan, son of late Sita Ram. Since the property has not been

partitioned, Brij Mohan could not have sold the same in entirety.

11. The suit was contested by the defendant-appellant S.K. Golam Lalchand as well as Brij Mohan on the allegation that late Salik Ram, sometime in 1960, gifted his share in the suit property to late Sita Ram. Thus, late Sita Ram became the absolute owner. Upon his death in 1975, the property devolved upon his son Brij Mohan and three daughters who relinquished their rights in favour of Brij Mohan, thus, making Brij Mohan the absolute owner of the entire property. The defendant-appellant S.K. Golam Lalchand by filing a separate written statement stated that he is a *bona fide* purchaser in good faith of the whole property vide registered sale deed dated 19.05.2006 executed by Brij Mohan. The said sale deed, in unequivocal terms, states the manner in which Brij Mohan had acquired the property. Therefore, the suit of the plaintiff-respondent Nandu Lal is misconceived and liable to be dismissed.

12. On the pleadings and submissions of the parties, the moot question which has arisen before us in the appeal is

whether Brij Mohan, son of late Sita Ram, alone was competent to transfer the entire suit property by way of sale deed dated 19.05.2006 in favour of defendant-appellant S.K. Golam Lalchand.

13. The plaintiff-respondent Nandu Lal, in order to substantiate his case, apart from other documents and oral evidence, brought on record the original deed of purchase of the property of the year 1959 *Exh.1* and he himself appeared as a witness PW-1 to prove his case. The said original sale deed is undoubtedly in the joint name of late Salik Ram and late Sita Ram, both of whom acquired equal rights in the purchased property. This position is otherwise also admitted to the parties.

14. The defendant-appellant S.K. Golam Lalchand or Brij Mohan has not led any evidence to prove the gifting of the share by late Salik Ram in favour of late Sita Ram. No gift deed in this regard has been produced in evidence. Therefore, as a natural consequence, both the brothers late Salik Ram and late Sita Ram continued to be the joint owners of the property.

15. On the death of Sita Ram, his share in the suit property naturally devolved upon his son Brij Mohan and three daughters. No evidence was brought on record to establish that the daughters have relinquished/gifted their rights in the suit property in favour of their brother Brij Mohan. In this way, Brij Mohan had not acquired the rights in the property possessed by his sisters.

16. Even the claim of the defendant-appellant S.K. Golam Lalchand or Brij Mohan to the suit property on the basis of the family settlement has not been proved. The settlement has not been adduced in evidence. Therefore, by no stretch of imagination, it can be said that Brij Mohan had acquired exclusive right in the entire property acquired and possessed by late Salik Ram and late Sita Ram by virtue of the sale deed 1959 *Exh.1*.

17. Even the Trial Court which had dismissed the suit of the plaintiff-respondent Nandu Lal has categorically recorded that the suit property was never partitioned as the defendant-appellant S.K. Golam Lalchand had not produced any cogent material on record to prove the

partition meaning thereby the property continued to be a joint property.

18. The First Appellate Court also recorded a finding that it is beyond pale of controversy that the suit property was equally owned by late Salik Ram and late Sita Ram and that the property had always remained undivided and joint between the co-owners. The family settlement on the basis of which partition or settlement is being claimed was never produced in evidence and proved. The First Appellate Court further recorded that the sisters of Brij Mohan have not gifted their share in the property or have relinquished their rights in it as no such documentary evidence was brought on record.

19. The above findings of the Trial Court and that of the First Appellate Court have not been disturbed by the High Court rather the Second Appellate Court has accepted the same which clearly demonstrates that the story of family settlement, as set up by the defendant-appellant S.K. Golam Lalchand and Brij Mohan was totally disbelieved by all the three courts. Moreover, it had come to the forefront that the property had remained the joint

property of late Salik Ram and late Sita Ram as the gifting of share by late Salik Ram in favour of late Sita Ram was not proved. The gifting and the relinquishment of shares by the three daughters/sisters in favour of Brij Mohan also could not be established.

20. In this view of the matter, the entire property purchased by the two brothers late Salik Ram and late Sita Ram in the year 1959 vide *Exh.1* continued to be the joint property in which both of them had equal rights. On their death, the same devolved upon their respective heirs and legal representatives including Brij Mohan, his three sisters on one side and plaintiff-respondent Nandu Lal, his three brothers and five sisters on the other side. Thus, Brij Mohan alone was not competent to execute a sale of the entire property in favour of the defendant-appellant S.K. Golam Lalchand, that too without its partition by metes and bounds.

21. Since the suit property has many co-owners including the plaintiff-respondent Nandu Lal and Brij Mohan, the defendant-appellant S.K. Golam Lalchand could not have acquired right, title and interest in the whole of the suit

property solely on the basis of the sale deed dated 19.05.2006 executed by Brij Mohan. The said sale deed, if at all, in accordance with Section 44 of the Transfer of Property Act, 1882 may be a valid document to the extent of the share of Brij Mohan in the property and defendant-appellant S.K. Golam Lalchand is free to take remedies to claim appropriate relief either by suit of partition or by suit of compensation and damages against Brij Mohan.

22. The authorities cited on behalf of the defendant-appellant S.K. Golam Lalchand are only to the effect that there is no illegality on his part in purchasing the share of Brij Mohan in the suit property and to that effect the sale in his favour is valid. There are no two opinions on the above aspect as mentioned earlier but those authorities do not help him in any way to enable us to reverse the decree passed by the First Appellate Court as affirmed by the High Court.

23. A faint effort was made in the end to contend that the plaintiff-respondent Nandu Lal had not asked for any relief of cancellation of the sale deed by which the property was purchased by the defendant-appellant S.K.

Golam Lalchand and, therefore, is not entitle to any relief in this suit. The argument has been noted only to be rejected for the simple reason that Section 31 of the Specific Relief Act, 1963 uses the word 'may' for getting declared the instrument as void which is not imperative in every case, more particularly when the person is not a party to such an instrument.

24. The suit property which is undivided is left with the co-owners to proceed in accordance with law to get their shares determined and demarcated before making a transfer.

25. The point for determination formulated in paragraph 12 above is accordingly answered and it is held that Brij Mohan alone was not competent to transfer the entire property without getting his share determined and demarcated so as to bind the other co-owners. Accordingly, the defendant-appellant S.K. Golam Lalchand has rightly been restrained by the decree of injunction in acting in derogation of the propriety rights of the co-owners until and unless the partition takes place.

26. In the above facts and circumstances, we do not find any merit in this appeal and the same is dismissed upholding the judgments and orders of the High Court dated 06.07.2021 and of the First Appellate Court dated 07.04.2018.

27. In the facts and circumstances of the case, there shall be no orders as to costs.

..... J.
(SUDHANSHU DHULIA)

..... J.
(PANKAJ MITHAL)

NEW DELHI;
SEPTEMBER 10, 2024.