

(2008) 03 CAL CK 0004
Calcutta High Court
Case No: S.A. No. 490 of 1993

Bani Prasanna Kundu and
Others

APPELLANT

Vs

Jaiten Nessa (since deceased)
Nawsed Ali and Others

RESPONDENT

Date of Decision: March 13, 2008

Hon'ble Judges: Tapan Kumar Dutt, J

Bench: Single Bench

Advocate: Bhaskar Ghosh, Bimal Chatterjee, for the Appellant; S.P. Sarkar, S. Parmar, S. Dan Respondent Nos. 10 and 11, for the Respondent

Final Decision: Allowed

Judgement

Tapan Kumar Dutt, J.

The Judgment of the Court was delivered by:

1. Heard the learned Advocates for the respective parties appearing before this Court.
2. It appears from the records and as submitted by the learned Advocates for the respective parties that at the time of admission of the appeal no substantial question of law was framed.
3. Having heard the parties it appears to this Court that the following is the substantial question of law involved in this appeal:
 - (i) Whether both the learned Courts below were right in dismissing the suit and/or the appeal and, thus, the plaintiffs' case by not following the principle that when there is a dispute between the area mentioned in a deed of conveyance and the boundaries indicated in such deed of conveyance, the boundaries described in such deed shall prevail.

4. The appeal has been heard and the learned Advocates for the respective parties appearing before this Court have made their submissions. Very briefly, the facts of the case are as follows:

The plaintiffs had instituted a suit for declaration of title and for restoration of possession and permanent injunction. The plaintiffs' case is that initially one Bibhuti Saha held 1.38 acres of land and the said Bibhuti Saha sold. 21 acre of land to R.N. Mukherjee and sons sometime in the year 1955 and also sold. 33/4 acres of land to Puma Chandra Singha sometime in the year 1955. Plaintiffs have stated that Puma Chandra Singha gifted the said.33/4 acres of land to one Rama Rani Das and Rama Rani Das sold it to the Kundus. It is also the plaintiffs' case that R.N. Mukherjee and sons also transferred their properties to the Kundus. Sometime in the year 1958/1959, the Kundus surrounded the said property by boundary wall, and by virtue of a "solenama" decree passed in a partition suit of the year 1965 the suit property was allotted in favour of Durga Prosanna Kundu sometime in the year 1971. The said Durga Prosanna Kundu executed deed of gift in favour of the plaintiffs/appellants in respect of the suit property. The plaintiffs' case is that the defendants threatened the plaintiffs when the plaintiffs attempted to make new construction on the suit property and some of the defendants had also entered into the suit property by breaking some portion of the boundary wall and as such the plaintiffs had to make a prayer for restoration of possession.

5. The case of the defendant Nos. 1 to 3 who contested the suit by filing a written statement was that after Bibhuti Saha had transferred the 243/4 decimals of land to R.N. Mukherjee and sons and Puma Chandra Singha, the remaining part was in the possession of Bibhuti Saba. According to the defendants, Durga Prosanna Kundu attempted to grab more land which was not allotted in his favour. According to the defendants, the plaintiffs have also intended to take possession of more land than they were legally entitled to.

6. The suit came up for trial and the learned Trial Judge dismissed the suit by holding that some land beyond the western boundary wall of the suit property was not transferred in favour of the plaintiffs and/or their predecessors-in-title and such land does not belong to the plaintiffs and that the principle that the boundaries described in the deed shall prevail in case there is any discrepancy between the boundaries mentioned in the deed and the area of the property sold mentioned in the deed shall not be applicable in the facts and circumstances of the instant case. Along with the said finding, very strangely, the learned Trial Court came to another finding and the said finding is that the location of the said land which, according to the learned Trial Court, has not been transferred in favour of the plaintiffs is not ascertainable. The learned Trial Court further found that the defendants also have failed to make out a case giving proper identification of their land.

7. It further appears that the learned Trial Court found that the local inspection was held on the basis of a municipal plan and therefore local investigation cannot have

any effect. The learned Trial Court came to the conclusion that the plaintiffs did not acquire title in the land beyond their boundary wall.

8. The learned Lower Appellate Court dismissed the plaintiffs' appeal by affirming the judgment and decree of the learned Trial Court. It appears from a perusal of the learned Lower Appellate Court's judgment that emphasis was given on the fact that the plaintiffs' predecessors-in-title had surrounded the suit property by boundary wall and therefore the plaintiffs cannot have any title in the land beyond the boundary wall.

9. Thus, on a perusal of the judgments of both the learned Courts below it appears that a conclusion was drawn to the effect that certain land exists beyond the western boundary wall of the suit property which had belonged to Bibhuti Saha. For coming to such conclusion, the learned Courts below took into consideration certain documents marked exhibits. Since such exhibits formed the basis of such conclusion of both the learned Courts below, this Court had asked the learned Counsel for the respondents appearing in this appeal to refer to those documents (exhibits) which can possibly show that the land really existed beyond the western boundary wall of the suit property. The learned Counsel for the said respondents could not refer to any such exhibits. On the other hand, the learned Counsel for the appellants referred to the learned Commissioner's report (Exhibit 11). The learned Commissioner has stated in his report inter alia "That the boundary of the identified suit land is identical and similar with the boundary of land schedule described in the registered "Kobala" executed by Bibhuti Saha to R.N. Mukherjee and sons dated 22.6.1955 and with the boundary of the land schedule described in the registered "Kobala" executed by Bibhuti Saha to Purna Chandra Singha dated 13.7.1955" and also "That after surveying it is found that the boundary of the disputed land is identical and similar with the boundary of the land schedule described in the registered "Kobala" executed by Rama Rani Das and R.N. Mukherjee separately to Kedar Prosanna Kundu and others both dated 12.3.1958". The said report was accepted by the learned Trial Court and it also became a part of evidence.

10. As already mentioned above, the learned Counsel for the respondents failed to show any document which can say with certainty that there was or is any land beyond the western boundary wall of the suit property. The learned Trial Court relied upon Exhibits 5/6 and 3 in order to come to a finding that there exists land beyond the western boundary wall of the suit property. This Court is of the view that such exhibits cannot form the basis of such finding.

11. Therefore, the principle that boundaries mentioned in the deed shall prevail when there is a dispute between the area of the transferred land indicated in the deed and the boundaries mentioned in the deed, squarely applies in the facts of this case.

12. The learned Counsel for the appellants has referred to 34 CLJ 141 and drew the attention of the Court to a certain line appearing at page 152 of the said reports where it has been observed that "Besides as was pointed out by the Judicial Committee in Haradas vs. Secretary of State, (1) if in fact, the boundaries are proved to include an area far greater than that referred to in the returns, such miscalculation or misrepresentation cannot defeat the title to the estate".

13. Reference was also made to 59 CLJ 532 at page 533 of the said reports where it has been observed that "There can be no doubt that where the boundaries are vague and indefinite, the area should prevail but where, as in the present case, the boundaries are specified and definite, the land that is conveyed must be the land within those specified boundaries and the area must be taken as having been given approximately".

14. Reference was also made to another judgment reported in [Roy and Co. and Another Vs. Sm. Nani Bala Dey and Others](#), In paragraph 6 of the said reports it has been observed that "Reference may be made to the cases of Gossain Das 1913 (18) CLJ 541 , ([Bhola Nath Chattopdhyay Vs. Mrityunjoy Chattopdhyay and Others](#),) and 52 CWN 719 at p. 722: (AIR 1948 207 (Privy Council)) to show that in case of conflict between the area and the boundary, the description of the boundary will prevail."

15. In the facts and circumstances of the instant case, if the documents of title of the predecessors-in-interest of the plaintiffs are taken into consideration starting from the aforesaid two documents of the year 1955 by which Bibhuti Saha had transferred certain lands to R.N. Mukherjee and sons and also to Purna Chandra Singha, it will appear that beyond western limit of such lands sold by Bibhuti Saha lies the high way. The learned Commissioner"s report also supports the plaintiffs" case that the highway is situated on the western side of the suit land. Thus, if the aforesaid principle, as laid down in the said reports, is applied then the plaintiffs" case succeeds.

16. In view of the aforesaid discussions, the impugned judgments and decrees are set aside and the plaintiffs" prayers in the suit for declaration of title and permanent injunction and restoration of possession in respect of the suit property, as prayed for in the plaint, are allowed.

17. The instant appeal thus stands allowed. There shall, however, be no order as to costs.