

(2010) 07 CAL CK 0076

Calcutta High Court

Case No: S.A. No. 453 of 2004

Prasanta Kumar Mondal

APPELLANT

Vs

Sukanta Pal

RESPONDENT

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**Date of Decision:** July 23, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 9, 100
- Specific Relief Act, 1963 - Section 34

**Citation:** (2011) 2 CHN 225**Hon'ble Judges:** Tapan Kumar Dutt, J**Bench:** Single Bench**Advocate:** Purnashis Gupta, Jayanta Mukherjee, for the Appellant; Subrata Bose, Nabanita Pal, Sandipto Bose, for the Respondent

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**Judgement**

1. This Court has heard the learned Advocates for the respective parties.
2. The Plaintiffs/Respondents filed a Title Suit No. 102 of 2001 which was placed before the Court of the learned 7th Civil Judge (Junior Division) at Howrah. Such suit was filed against the Defendant No. 1/Appellant and the Defendant No. 2/proforma Respondent. In such suit, the Plaintiffs prayed for a decree for declaration that the Defendants do not have any right, title and interest over the suit property and also for a permanent injunction for restraining the Defendants from interfering with the alleged peaceful possession of the Plaintiffs over the suit property. In the plaint the suit property has been described to be a bastu land with structures comprising of an area of 14 chattaks 7 sq. ft. within holding No. 93, Netaji Subhas Road, Howrah. The Plaintiffs did not make any prayer for declaration of their title but the Plaintiffs claimed that they are the owners of the suit property. The Defendants contested the said suit by filing a written statement. It appears from the submissions made by the learned Advocates for the respective parties and the materials on record that the Defendants disputed the claim of the Plaintiffs over the suit property and it was the

Defendants" case that the Plaintiffs purchased the said holding No. 93 by describing a false and concocted schedule and showing false plan with an ill motive to grab the Defendants" property. Materials on record indicate that there is a serious dispute about the identity of the suit property. Whether the suit property is within the holding No. 93, Netaji Subhas Road, Howrah or within the holding No. 94, Netaji Subhas Road, Howrah is a matter which was required to be decided in the suit. It further appears that the Defendants have claimed to be owners of 94, Netaji Subhas Road by virtue of sale deed and rectifications thereof.

3. The suit came up for hearing and the parties adduced their respective evidence. The learned Trial Court by judgment and decree dated 28th April, 2003 decreed the said suit declaring that the Defendants have got no right, title and interest over the suit property and the Defendants are perpetually restrained from disturbing and/or interfering with the peaceful possession of the Plaintiffs.

4. It appears that the learned Trial Court considered the evidences on record including some of the documentary evidences and came to the finding that there is nothing to hold that the suit property is situated within the holding No. 94.

5. It also appears that the issue was framed in the suit as to whether or not the suit is barred under the provision of Section 34 of the Specific Relief Act and as to whether or not the suit is maintainable.

6. The learned Trial Court while discussing the issue No. 1 (whether the suit is maintainable) considered the judgment reported at AIR 1986 Jammu and Kashmir 24 as it appears that the Defendants" case was that the suit is hit by the provision of Section 34 of the Specific Relief Act and the suit which only contains a prayer for negative declaration is not maintainable:

7. While considering the said reported case, the learned Trial Court came to the conclusion that certain observations in paragraph 6 of the said reported case helps the Defendants. In spite of such finding the learned Trial Court found that the suit is maintainable.

Be that as it may, the Defendants preferred an appeal being Title Appeal No. 83 of 2003 which was placed before the learned Civil Judge (Senior Division), 1st Court, Howrah. The learned Lower Appellate Court by its judgment and decree dated 28.11.2003 dismissed the said appeal by making following observations:

Considering the facts and circumstances of the Appellant's case and also considering the version of the Id. Advocate of the Respondent. I think that the Id. Trial Court has passed his judgment explaining all issues and the right, title and interest was established covering all the issues and the exhibited documents and so on the Id. Trial Court gave relief to the Plaintiff concerned in such a manner as the Plaintiff claimed in the plaint. There is no hindrance to give relief to the parties concerned by the Trial Court below in respect of the delivery of the judgment in

favour of the parties concerned. So, the judgment as passed by the Id. Court below covering the claim of the Plaintiff was justified as the same was focused upon all the issues. There is no iota of evidence to disbelieve in the facts that the judgment as passed by the Id. Court below is without jurisdiction and hit by Section 34 of the Specific Relief Act, I think, that the judgment and decree as passed by the Id. Court below is justified.

8. It appears that the appeal was admitted for hearing by an Hon"ble Division Bench of this Court on the ground Nos. 2, 4 and 5.

9. In ground No. 2, the Appellant raised the point that the learned Trial Court's judgment on the basis of the municipal assessment register is erroneous since such register cannot in any way be an evidence with regard to the title to a property.

10. In ground No. 4, the Appellant challenged the judgment and decree on the ground that the finding of facts with regard to the title of the Plaintiff over the suit property is perverse.

11. In ground No. 5, the Appellant took the ground that the learned Lower Appellate Court erred in law in affirming the judgment and decree of the Trial Court without considering the fact that even though there is no evidence as regards identity of the suit property the learned Trial Court decreed the suit in favour of the Plaintiffs.

12. Learned Advocate appearing on behalf of the Appellant has mainly argued before this Court that the learned Lower Appellate Court's judgment is devoid of any reason. He has submitted that the learned Lower Appellate Court did not apply its mind to the facts and circumstances of the case and mechanically affirmed the judgment and decree passed by the learned Trial Court.

13. He also submitted that the learned Lower Appellate Court was not even sure as to whether or not the learned Trial Court's judgment was passed on any solid finding. He has further submitted that it was the Plaintiffs/ Respondents' duty to prove their case by making an application under Order 26 Rule 9 of the CPC for establishing the identity of the property.

14. It is his submission that the Plaintiffs cannot get a decree in the suit on the basis of any weakness in the defence case. The Plaintiffs have to prove their own case. He has further submitted that the Defendant was under no obligation to file an application for local investigation. He has emphatically submitted that since the impugned judgment and decree is devoid of any reason the said judgment and decree have to be set aside and the matter should be sent back on remand to the learned First Appellate Court for proper decision in the title appeal. The learned Advocate for the Appellant has also argued that the learned Lower Appellate Court did not at all advert to the question as to whether or not the suit as brought by the Plaintiffs is maintainable and as to whether Section 34 of the Specific Relief Act debars such suit.

15. He cited a decision reported at 2005 (2) CLJ Cal 187 (Nandarani Bhandari and Ors. v. Pratima Bhandari and Anr.) in support of his contention that in order to establish the identity of the property in dispute, it is absolutely necessary that there should be a proper local investigation. Since in the present case there is a dispute as to whether or not the suit property is included within the premises No. 93, Netaji Subhas Road, Howrah it is necessary that a local investigation should be done to find out the answer to such question.

16. He cited another decision reported at [Mohinder Singh and Co. Vs. Board of Trustees of the Port of Bombay](#), . In the said reported case, the Hon"ble Supreme Court was pleased to observe that "Only on the ground that the order was not a speaking order and a reasoned order and the same was passed without applying its mind, the impugned order is set aside".

17. He cited a decision reported at [Prakash Chand Vs. Ratan Chand Saravgi](#), . In the said reported case, the learned Rent Controller concerned passed an order of eviction of the tenant concerned and the tenant filed a revision petition in the High Court which was dismissed. The matter went up to the Hon"ble Supreme Court and the Hon"ble Supreme Court was pleased to observe that "the order of the High Court did not disclose any reason whatsoever which weighed with it to dismiss the revision petition by a non-speaking order and the absence of reasons has deprived the Hon"ble Supreme Court to appreciate the circumstances which weighed with the High Court to dismiss the revision petition"

18. The Hon"ble Supreme Court was also pleased to observe that giving of reasons, howsoever brief, in support of the conclusion is much too obvious. The Hon"ble Supreme Court was ultimately pleased to set aside the order of the High Court and remand the revision petition to the High Court for fresh disposal in accordance with law.

19. The said learned Advocate cited another decision reported at United India Insurance Co. Ltd. v. Kanwal Nain Sachdeva and Ors., (1999) 9 SCC 193 wherein the Hon"ble Supreme Court was pleased to observe that the High Court concerned dismissed the appeal by a cryptic order and the High Court ought to have discussed the merits on the contentions raised by the party concerned particularly when it was dealing with the first appeal against the order of the Tribunal.

20. He cited another decision reported at [Divl. Forest Officer, Kothagudem and Others Vs. Madhusudhan Rao](#), . Paragraphs 19 and 20 of the said reports are as follows:

19. Having considered the submissions made on behalf of the respective parties and also having regard to the detailed manner in which the Andhra Pradesh Administrative Tribunal had dealt with the matter, including the explanation given regarding the disbursement of the money received by the Respondent, we see no reason to differ with the view taken by the Administrative Tribunal and endorsed by

the High Court. No doubt, the Divisional Forest Officer dealt with the matter in detail, but it was also the duty of the appellate authority to give at least some reasons for rejecting the appeal preferred by the Respondent. A similar duty was cast on the revisional authority being the highest authority in the Department of Forests in the State. Unfortunately, even the revisional authority has merely indicated that the decision of the Divisional Forest Officer had been examined by the Conservator of Forests, Khamman wherein the charge of misappropriation was clearly proved. He too did not consider the defence case as made out by the Respondent herein and simply endorsed the punishment of dismissal though reducing it to removal from service.

20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum.

21. He cited another decision reported at 2010 (1) WBLR (Cal) 583 (Santanu Kumar Mukhopadhyay v. State of West Bengal and Ors. ). In paragraph 5 of the said reported case an Hon'ble Division Bench of this Court was pleased to consider the judgment reported at [Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others](#), wherefrom it appears that the Hon'ble Supreme Court was pleased to consider another judgment of the Hon'ble Supreme Court and observed that an order of affirmance need not contain an elaborate reasoning as contained in the order of original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance and to take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority.

22. Learned Advocate for the Appellant, of course, cited two other decisions, i.e. (i) reported at 2004(2) WBLR (Cal) 431 (Sett Metha Pvt. Ltd and Anr. v. Standard Chartered Bank) and (ii) [Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale \(D\) and Others](#), . in support of his contention that to answer a question with regard to the title of a property no reliance can be placed upon either the municipal records or the survey records. He relied upon a decision reported at [Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale \(D\) and Others](#), also in support of his contention that without a proper local investigation there cannot be a proper decision with regard to the identity of a property.

23. Learned Senior Advocate for the Plaintiffs/Respondents submitted that it will appear from the title deed of the Defendants and also subsequent deeds of rectification that the Defendants at different points of time had claimed different

areas in respect of their property and, therefore, no reliance can be placed on the Defendants' case. He has also submitted that the learned Trial Court has considered all the necessary evidences on record and came to its conclusion with regard to the Plaintiffs title in the suit property and there was no necessity for the learned Lower Appellate Court to go into the evidences in details.

24. According to the said learned Advocate, since the learned Trial Court has considered all the relevant materials on record there is no infirmity and/or illegality in the impugned judgment and decree as the learned Lower Appellate Court thought that the learned Trial Court was quite justified in delivering its judgment.

25. The learned Senior Advocate wanted that this Court should go into the evidences on record and consider all the Exhibits for a decision on facts as to whether or not the Plaintiffs have any title in the suit property.

26. This Court is of the view that in a second appeal it is not proper that a second Appellate Court should reappraise the evidences on record keeping in view the provisions of Section 100 of the Code of Civil Procedure.

27. The said learned Senior Advocate cited a decision reported at [Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury](#), and referred to paragraph 12 of the said reports. It will appear from paragraph 12 of the said reports that the Hon"ble Supreme Court was pleased to find upon consideration of the facts and circumstances of the said case that Their Lordships were unable to hold that the learned Judge of the High Court did not consider the evidences. Thus, from the facts of the said reported case, it will appear that the Hon"ble Supreme Court in the said case did consider the evidences. The Hon"ble Supreme Court was also pleased to observe that it is not the duty of the Appellate Court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. The Hon"ble Supreme Court was pleased to hold that expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice. In this connection, a decision reported at 2010 (1) WBLR (Cal) 583 (supra) may be considered as in the said reports Jagdish Sharan Varshney's case was considered in paragraph 5 of the said reports, as indicated above, and the Hon"ble Supreme Court in the said Jagdish Sharan Varshney's case was pleased to observe that a brief reason needs to be given even in the case of an order of affirmance.

28. In the instant case, learned Lower Appellate Court, it appears, was not quite sure as to whether the learned Trial Court was justified in delivering its judgment as the learned Lower Appellate Court instead of giving any positive finding observed:

I think that the learned Trial Court has passed his judgment explaining all issues and the right, title and interest was established covering all the issues and the exhibited documents and so on the learned Trial Court gave relief to the Plaintiffs concerned in such a manner as the Plaintiffs claimed in the plaint.

29. Firstly, it is difficult to appreciate the meaning of the abovequoted passage from the impugned judgment and secondly, the observation of the learned Lower Appellate Court appears to be tentative.

30. In such circumstances, this Court is of the view that Girijanandini Devi's case (supra) cannot be of any assistance to the Plaintiffs/ Respondents.

31. The learned Senior Advocate for the Respondents cited another decision reported at [Union of India \(UOI\) and Another Vs. Raghubir Singh \(Dead\) by Lrs. Etc.,](#) . etc. in support of his contention that since the decision reported at [Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury,](#) was delivered by a Bench comprising of three Hon"ble Judges the said decision shall prevail over the other decisions.

32. This Court has already come to the finding, as indicated above, that on the facts of the case, the said decision in Girijanandini Devi's (supra) case cannot be of any assistance to the Plaintiffs/Respondents.

33. The said learned Advocate cited another decision reported at AIR 1992 MP 22 (Ramjan Khan and Ors. v. Baba Raghunath Dass and Ors.) in support of his contention that the learned Lower Appellate Court need not give reasons in details when it agrees with the finding of the learned Trial Court. It will appear from the said reports that in the said reported case, the Lower Appellate Court had reappreciated the evidences and considered the contentions raised before it and dismissed the appeal. But in the instant case, the learned Lower Appellate Court did not reappreciate the evidences as will appear from the impugned judgment.

34. The other decision cited by the learned Advocate is the one reported at [Mool Raj Vs. Atma Ram,](#) ) on the question of maintainability of the suit and the prayer for negative declaration sought for by the Plaintiffs. It is not necessary for this Court to go into such question in this appeal in view of the fact that this Court is of the view that it will be fit and proper if the matter is sent back to the learned Lower Appellate Court on remand since the learned Lower Appellate Court has not assigned any reason whatsoever while passing the impugned judgment and decree. It will also not be proper for this Court to decide any issue on the merits of the case in the present second appeal since this Court is also of the view that the learned First Appellate Court ought to have gone into the question of facts and decided the points taken by the Defendants in their title appeal. From the judgments cited at the Bar it will appear that the learned Lower Appellate Court even while affirming the judgment of the learned Trial Court ought to have given some reason as to why it thought fit to affirm the judgment and decree of the learned Trial Court. Otherwise, as the Hon"ble Supreme Court has held in Prakash Chand's case (supra) that absence of reasons has deprived the Hon"ble Supreme Court to appreciate the circumstances which weighed with the High Court concerned to dismiss the revision petition, and giving of reasons, howsoever brief, in support of its conclusions is

much too obvious.

35. In view of the discussions made above, the present second appeal is allowed by setting aside the judgment and decree passed by the learned Lower Appellate Court and the matter is sent back on remand to the learned Lower Appellate Court for a fresh decision after giving the parties an opportunity of hearing in accordance with law.

36. Learned Lower Appellate Court will now decide the title appeal concerned afresh and dispose of the same in accordance with law by passing a reasoned judgment after giving the parties an opportunity of hearing and considering the pleadings and the evidences on record.

37. It is made clear that this Court has not gone into the issues raised in the suit and/or the merits of the title appeal and the learned Lower Appellate Court will be free to decide the title appeal independently on its own merits. The learned Lower Appellate Court shall try to dispose of the title appeal concerned as expeditiously as possible.

38. Let the Lower Court Records be sent down to the learned Court below concerned by special messenger and the special messenger cost shall be put in by the Appellant within one week.

39. Urgent xerox certified copy of this order, if applied for, be given to the parties on compliance of usual formalities.