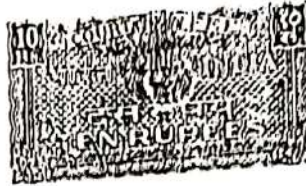
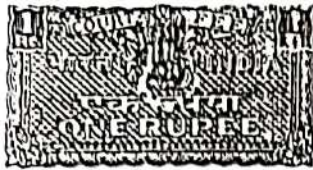


Case paper pardoi



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156
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COURT RECORDS
COMPARING CLERK
2/2/08

FORM OF ORDER SHEET

In the Court of the Civil Judge (Junior Division) 1st. Court,
Durgapur.

Present :- Sri P. Mahapatra, Civil Judge (Junior Division) 1st.
Court, Durgapur.

Title Suit No. 22 of 2008.

Plaintiff.

Sri Dipak Kr. Rai

-Versus-

Defendant.

Sri Bhaskar Ghosh & Ors.

Order No. 6 dated 30/1/08.

Parties file hazira.

The case record is taken up for passing order on a
petition under Order 39 Rules 1 & 2 read with Section 151 of
the Civil Procedure Code filed by the plaintiffs.

Perused the plaint, petition, written objections and
other materials on record.

Considered.

The plaint, case, in short, is that the A and B
schedule suit properties are verbally dedicated by their
erst-while owners to the villagers of Pardahi for the purpose
of establishing a temple for Lord Bishnu and also for Hari
Sankirtan Nat Mandir. After such dedication, the said temple
and Hari Sankirtan Mandir had been constructed thereon on the
donations by the villagers and others on first January, 1901.
The 16 anna committee of Pardahi village have been performing
the Seva Puja and Harinam Sankirtan every year peacefully and
uninterruptedly. One religious and charitable trust has been



65.

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created under the name and style Pradohi Hari Sankirtan Charitable Trust by the village 16 anna committee for the better management, development and for fulfilling the object of the Hari Sankirtan Mandir and the temple of Lord Bishnu by virtue of a registered trust deed. It is alleged by the plaintiffs that the defendants no. 1 & 2 came to the village all on a sudden on 9/1/2008 and claimed themselves as the owner and possessor of the suit property and told the defdt. no.3, their agent, to construct a boundary wall over the suit property occupied by the trustee board. It is also alleged by the plaintiffs that the defendants have collected some building materials to construct the wall over the suit property and are trying to dispossess the plaintiffs from the suit property and are trying to dispossess the plaintiffs from the suit property but the defendants have no right, title, interest and possession over the suit property rather the plaintiffs have acquired right, title, interest and possession over the suit property by way of dedication by the erstwhile owners and also by way of adverse possession. Therefore, the plaintiffs by filing the instant petition has prayed before this Court for an order of temporary injunction restraining the defendants and their men and agents from interfering and disturbing the peaceful possession of the plaintiffs over the suit property and also from performing the Seva puja of the Deity plaintiff no.2 and also from making any type of construction over the A and B scheduled suit properties after encroaching the same.



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The defendants have contested the instant petition by filing written objection stating, inter alia, that the petition is not at all maintainable in the present form and law. The defendants have denied all the material allegations levelled against them by the plaintiffs. It is the specific defence of the defendants that Sri Kartick Chandra Saha, s/o Sri Nishikanta Saha, Lakuldi was the original owner of the entire plot no. 337 of mouza Pardai who subsequently transferred the entire plot to one Asoke Kumar Burman and Nema Chandra Nag. The said Asoke Kumar Burman and Nema Chandra Nag subsequently transferred the entire plot in favour of Bhupal Ch. Ghosh s/o Sri Priya Nath Ghosh by dint of sale deed being no. 4742 of 1961 in the office of the Sub-Registrar, Burdwan and delivered possession. After the death of said Bhupal Ch. Ghosh, the present defendant nos. 1 & 2 have inherited the entire plot and their names have duly been recorded in the L.R. record of rights in Khatian nos. 156 & 157. It is also submitted by the defendants that the plaintiffs are not the owner or occupier or possessor of the plot no. 337 of mouza Pardai. They falsely incorporated a portion of plot no. 337 in this suit only to harass the defendant nos. 1 and 2. It is also submitted by the defendants that the story of adverse possession is totally false and fabricated and these defendants are neither connected with the plot no. 336 nor making any construction work over the plot no. 336 of mouza Pardai and there is no amalgamation of plot no. 336 and



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337 on the locality. Accordingly, the defendants have prayed before this court to reject the instant petition.

Considering the facts and circumstances of the case as well as the documents submitted by both the parties to the suit and other materials on record it appears before this Court that one Bhupal Ch. Ghosh i.e. the predecessor in interest of the defendant nos. 1 and 2 was the owner of entire 51 acre of land in plot no. 337 of mouza Pardai by virtue of a registered deed of sale being no. 4742 of 1961 and the said land has been mutated in the name of the defendant nos. 1 & 2 in L.R. Khatian no. 156 and 157 of mouza Pardai in the name of defendant nos. 1 & 2. On the other hand, the plaintiffs have failed to file any scrap of paper in respect of their right, title and interest in respect of the B scheduled suit property i.e. 20 satak of land out of 51 satak under plot no. 337 of Mouza Pardai. Therefore, it can be safely presumed that the defendant Nos. 1 & 2 have better title over the B scheduled suit property than the plaintiffs and accordingly, no order of temporary injunction can be passed against the defendant nos. 1 and 2 in respect of the B scheduled suit property. It is admitted by the defendant nos. 1 and 2 that they have no connection and they are not doing any construction work over plot no. 336 of mouza Pardai i.e. the A scheduled suit property. Now, so far A scheduled property concerned, it appears before this Court from the report of the Id. Inspection Commissioner that the nature and character of the schedule A & B property



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is temple of Radha Krishna, a platform/stage made by mud and cement and rest portion of the same was lying vacant and both the plot are amalgumated and the Id. Commissioner has also found some building materials like sands, gravels stone and some broken new bricks lying on the suit property and the Id. Advocate of the plaintiffs submitted before the inspection Commissioner that the said temple of Radhakrishna has been situated over the A scheduled suit property.

Now, whether the defendants are doing their construction work over the A scheduled suit property is a matter of trial and can not be decided, at this stage, without taking evidence from both the parties to the suit.

Considering all these aspects this court is of the view that the plaintiffs have a prima facie case to go to the trial and the balance of convenience and inconvenience is also in favour of the plaintiffs so far as A scheduled suit property is concerned.

Hence, it is,

O r d e r e d,

that the petition under Order 39 Rules 1 & 2 read with Section 151 of the Civil Procedure Code filed by the plaintiffs is hereby allowed on contest without cost.

The defendants are hereby restrained from entering, interfering and disturbing the peaceful possession of the plaintiffs and from making any type of construction over the A scheduled suit property till disposal of the suit.

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- 6 -

To 26-2-08 for framing of issues.

Dictated & corrected
by me.

Sd/- P. Mahapatra.

Civil Judge (Jr. Division)

1st. Court, Durgapur.

Sd/- P. Mahapatra,
Civil Judge (Jr. Divn.)
1st. Court, Durgapur.

Typed by:- C. Sarkar

Compared by:- 82
2/2/08

17/11/08

Annexure P/2

2/8/2008

In the Court of the Hon. Chief Judge of the 1st Court,
Muzaffargarh.

No. 72 of 2008.

Plaintiffs: 1) Sri Dipak Kumar Singh
W/o Late Hari Singh
represented on behalf of Panchhi Hari
Charitable Trust, a Regd. Trust
having its registered office at "Hari
Sankar Mandir" at Village Panchhi,
P.O. Fuljori, Panchhi Tehsil,
Dist. Bahawalpur.

2) Sri Sri Lord Bhanu a deity installed
in a Temple at Vill. Panchhi being represented
by the Board of Trustees under the
name and style "Panchhi Hari Charitable
Trust."

Defendants: 1) Sri Bhanu Singh
W/o Bhanu Singh
2) Sri Bhanu Singh
W/o Bhanu Singh
Both are presently resident of 75, Raj Bazaar,
Main Road, Mohalpur-7.

3) Sri Tejendra Singh
W/o Tejendra Singh
Resident of Vill. Panchhi, P.O. Fuljori,
Panchhi Tehsil, Dist. Bahawalpur.

suit for declaration and permanent injunction with
corresponding relief valued at Rs. 100/-

The Plaintiffs respectively beg

to shew that

1. That the property mentioned and described in the
Schedule 'A' below originally belonged to Kali Prasad
and Satish Chandra Mondal having joint share each
and the Schedule 'B' property belonged to the then
Sardar Chandra Chandra Mondal.

2. That said original owners of the Schedule 'A' and
'B' property were pious and religious minded and owned
and possessed huge landed property in their village.

3. That the Defendants predecessors of the plaintiffs
and other members of the family desired to
establish a temple at their village by constructing
a temple and accordingly they were handed landed property
when they requested the said owner and remainder for same
and over the schedule property to fulfil their desire
and accordingly they dedicated the landed property men-
tioned in the Schedule 'A' and 'B' verbally to the then
Villagers of their village for the purpose of a temple for
the deity of "Kali" and also for their
ancestors of the family.

fact

deputy
warrant

4. That after dedication the Acharya property the said temple and Hari Ganesh Mandir had been constructed by them and the cost of construction had been borne by the villagers who are now old and infirm or more than 100 years old and since then the Hari Ganesh Committee of the village has been performing the duties of the Hari Ganesh Mandir and the Hari Ganesh Mandir has been functioning since then and the Hari Ganesh Mandir and the Hari Ganesh Mandir shall also have been witnessing the Hari Ganesh Mandir.

5. That the said temple was dedicated and devoted several times without any interruption. The administration of the Mandir was being managed by the villagers Committee known as "Solankhi" Committee.

6. That after the death of the said Hari Ganesh Mandir on 30.10.2007 all the villagers Solankhi Committee performed the Hari Ganesh Mandir and on that day they made up their mind to transfer the Hari Ganesh Mandir and Hari Ganesh Mandir in the hands of a religious charitable trust and on the said proposal all the villagers of the village Solankhi Committee agreed to do so for the better management and development and for fulfilling the object of the Hari Ganesh Mandir and the Temple of Hari Ganesh Mandir.

Continued

* 4 *

Religious Charitable Trust has been created by the villagers in a Deed under the name and style "Panchayat Samiti, Kanchi" having its office at Mandir premises over the undivided school property and the said Trust has registered before the Addl. District Registrar Office at City Centre, Tumkur-25, Dist. Bangalore being No. 10000 for the year 1908 in Book No. IV and Volume No. 1, pages from 61 to 104. The plaintiff prayed to refer the same at the time of hearing.

7. That the plaintiff being one of the settlor of the said Trust Board has endeavored to make necessary repairs and repairs with the assistance of the villagers and accordingly they had made arrangements to do the same for the development of the Datt Temple and Kanchi Sankirani Mandir.

8. That all on or about 1910 the defendants No. 1 or 2 came to the said Village and Kanchi property and claiming themselves that they have dislocated the school property from the said recorded owner and told that the Defendants No. 1 in their agent and authorized representatives will construct the boundary over the school property occupied by the Trust Board but since above century none came to claim the property at any point of time. After dedication the school property by way of midati since above century the R.G. record is erroneous as the Datt Lord Mahan or Kanchi Sankirani Mandir have no right, title, interest and possession by way of dedication by the children of the school property and

Accordingly the Defendants have no right, title, interest and possession over the schedule property at any point of time.

9. That on 12.01.08 the Defendants have collected some building materials to construct their wall over the schedule property and trying to dispossess the plaintiffs from the schedule property to which the Deceased Trustee Board slipped in the bid for which the members of the Trustee Board raised objection for their such illegal and wrongful activities but they did not pay heed on the aforesaid they threatened the plaintiffs and told them they will forcibly occupy the schedule property.

10. That the plaintiffs village and the Temple of the Deity are ancient and for the development and smooth management of Debaraja of the said Deity and Hari Krishna Mantra the village Voluntary Committee created a religious Charitable Trust and started to perform the object of the trust which caused jealousy upon the plaintiffs by the defendant. But the Defendants have no right, title, interest and possession over the schedule property on the one hand and the plaintiffs have acquired right, title, interest and possession over the schedule property by way of dedication by the then real owner and remainder and ancestral title by way of adverse possession who were Hindu and religious minded.

11. That under the facts and circumstances as stated above the plaintiffs right, title, interest and possession including possession of Lord Nichan over the schedule properties has been excluded and adverse possession of the plaintiffs over the schedule property will also be excluded.

12. That the acts of the defendants are all illegal, wrongful, unconstitutional, arbitrary and against the religious sentiments of the villagers as well as the interests of the Trustees and Board as they have/had no right, title, interest and possession since before January 1991 over the schedule property.

13. That the cause of action of this suit arose on 1990, and 1991, and thereafter day by day in four sessions under P.W. No. 10, Sub-Division Aligarh District within the jurisdiction of this Ld. Court.

14. That for the purpose of Court fees and Jurisdiction the suit is valued at Rs. 10,000/- for declaration and permanent injunction and the ad valorem court fees are paid thereon.

15. The plaintiffs therefore pray :-

- a) that a decree for declaration that the plaintiffs have acquired right, title, interest and possession by way of dedication by the then real owner and possessor of the property mentioned in the schedule is granted below.

- 7 -

- b) that a decree for permanent injunction restraining the defendants and their heirs, assigns and laborers from entering into and disturbing the peaceful possession and performing the Hindu ritual or duty plaintiffs are and any other performance as per object of the Trusts Deeds and also restraining the defendants from making any type of construction over the 1st and 2nd schedule properties encroaching the dedicated properties of the plaintiffs;
- c) any other relief / reliefs which could be granted and proper in law and equity;
- d) for all costs of the suit.

Schedule - 1st

In the District of Burdwan, within P. U. II, Township in House Panchal, T. I. No. 76, under Plot No. 336 appurtenant to C.B. Kh. No. 201, measuring an area of 22 satak out of which 04 satak.

Schedule - 2nd

In the District of Burdwan within P. U. II, Township in House Panchal, T. I. No. 76, under Plot No. 337 measuring area 51 satak out of which 20 satak are.

Contd. 1/6

Valuation.

I, one of the plaintiffs of this suit, solemnly submits that the suit is a suit for declaration of title and for permanent injunction valued at Rs. 100/- by the plaintiff. The plaintiff is entitled to such valuation as per his own estimation and as per provisions and section 7(1)(a) of the Court Fees Act and there is no other cause present for valuation.

Verification.

I, one of the plaintiffs do hereby declare that the statements made in para 4 to 10 are true to the best of my knowledge and belief and the facts are by submission before the Hon. Court. I sign this verification on this 27th day of January, 2008 at Durgapur Court, witnessed by me.

Advocate.

Declarant.

AFFIDAVIT

I, Sri Dipak Kumar Saha, son of Sri Late Gopi Saha, aged about 45 years, by faith Hindu, by occupation ex-Serviceman, residing at...

Contd. 2/3

... 9 ...
... Villero Pardo, P.O. Fullerton, Cal. N.S.S., Dist.
... do hereby solemnly affirm and declare as
follows :-

1. That I am the plaintiff herein in this suit.
2. That I am well acquainted with the facts and
circumstances of this suit.

That the statements made above are true to the best
of my knowledge and belief and I sign and swear this
at ... on this the 17th day of January, 1938 at
... Court.

Identified by me,

Advocate.

Defendant.

... P/2