

**CIVIL APPEAL**  
**S.A. 257 OF 2006**

**PRESENT : THE HON'BLE JUSTICE TAPAN KUMAR DUTT**

**Date of judgement 22.06.2010**

**Srimati Asha Roy @ Gouri Roy**

**- versus -**

**Srimati Binapani Basak**

**POINTS**

ONUS – In the written statement the defendants did not mention that owner did not execute any deed in favour of vendor of the Plaintiff relating to the property in dispute - Whether it is for the plaintiff to prove her case in the plaint by adducing proper evidence – Whether court can declare title of the plaintiff in respect of plot No. 408 when the vendor of the plaintiff had purchased plot No. 408/531 from the original owner– Code of Civil Procedure 1908, S – 100.

**FACTS**

When the plaintiff objected to the acts of the defendants, the defendants alleged that the plaintiff has no right, title and interest in the suit property. The plaintiff asked the defendants to demolish the room which are illegally constructed in the suit property and deliver up possession of the same in favour of the plaintiff but since the defendants refused to do the same the plaintiff had to file the said suit. The plaintiff has prayed for a decree for a declaration of the plaintiff's right, title and interest of the 'ka' schedule property of the plaint and also for a decree for recovery of possession in favour of the plaintiff after removal of the tin shed construction from the 'ka' schedule property of the plaint. The defendants contested the said suit by filing a written statement

denying the material allegations made in the plaint. According to the defendants an Objection Case No.135 under Section 51A(1) of the West Bengal Land Reforms Act, 1955 was filed by the plaintiff before the Settlement Circle Office, Santipur, Nadia in respect of such 10 decimals of land in Plot No. 408 but the said objection was disallowed by the authority concerned as the plaintiff failed to produce the relevant documents before the authority concerned. The defendants further alleged that the original construction was made by Owner which comprised of one big tile shed with verandah on two sides along with courtyard and shed for the shelter of cows. The said Owner, according to the defendants, also installed one tubewell. The plaintiff subsequently filed an application before the B.L. & L.R.O., Shantipur, Nadia under Section 50 of the West Bengal Land Reforms Act, 1955 in respect of the said 10 decimals of the land but the said application was also disallowed. The defendants alleged that the name of Owner was recorded in the R.S. Records of right and also in the Hal L.R. R.O.R. The defendants prayed for dismissal of the suit. The said suit came up for final hearing when evidence was adduced on behalf of the respective parties. The Learned Trial Court found inter alia that from the oral evidence it will appear that it was never proved that the plaintiff was ever in possession of the suit property and the plaintiff has failed to prove that there was any cause of action to file the said suit. The Learned Trial Court further found that the plaintiffs also could not produce rebuttal evidence against the documents of possession especially the finally published R.S. and L.R. Record of Right. Accordingly, the Learned Trial Court dismissed the said suit. The plaintiff filed an appeal against the decree passed by the Learned Trial Court and it was placed before the Learned Civil Judge (Senior Division) Ranaghat, Nadia, for hearing. The Learned Lower Appellate Court declared that the plaintiff has right, title and interest over the 'ka' schedule property as mentioned in the plaint and the defendants were directed to deliver up khas possession of the said property by removing the 'tin-shed chhapra' within 30

days and in default the plaintiff was given liberty to execute the decree through court. According to the Learned Lower Appellate Court it can be assumed that Bela Rani Biswas actually sold away the suit property from plot No. 408. Accordingly, the Learned Lower Appellate Court found that the plaintiff has title in the suit property and the Title Appeal was allowed by the Learned Lower Appellate Court. Challenging the judgement and decree passed in the said Title Appeal the defendants have preferred the instant Second Appeal.

**HELD**

It appears that the Learned Lower Appellate Court laid much emphasis on its finding that in the written statement the defendants did not mention that owner did not execute any deed in favour of vendor of the Plaintiff relating to the property in dispute. It appears that the Learned Lower Appellate Court erroneously emphasized this aspect of the matter since it is for the plaintiff to prove her case in the plaint by adducing proper evidence. The plaintiff also could not prove her alleged possession in the suit property. Thus, the intention of the parties to the purported deed being Ext.2 does not appear to be sufficiently clear. That apart, in Ext. 2 the boundaries of the property purported to be sold have not been described. This makes the position even worse and it further weakens the plaintiff's case. It is surprising that the said vendor of the plaintiff did not subsequently make any attempt to rectify the deed concerned. The Learned Lower Appellate Court was in error in declaring the title of the plaintiff in respect of the suit property at plot No. 408 when the vendor of the plaintiff had purchased plot No. 408/531 from the original owner. The Learned Lower Appellate Court was also in error in proceeding on the basis of assumption that the owner sold away a portion of plot No. 408 to the vendor of the plaintiff. The Learned Lower Appellate

Court should not have granted any relief to the plaintiff in view of the fact that the plaintiff's vendor could not have transferred the suit property to the plaintiff when such vendor himself did not obtain any title to the suit property, at least, without the rectification of the deed i.e. Ext. 2.

Para 17

**CASES CITED**

**1. 2009 (2) Supreme 728** (Koppisetty Venkat Ratnam (D) through LRs. - vs. - Pamarti Venkayamma)

**2. AIR 2001 Supreme Court 2920** (Veerayee Ammal - vs. - Seeni Ammal)

**AIR(SC) (1993) 2592** (Smt. Naseem Bano - vs. - State of U.P. and others)

**3. 2006 (2) Supreme 649** (Venkatappa @ Moode (D) by LRs. - vs. - M. Abdul Jabbar & Ors.)

**4. 42005 (2) CHN 601** (Dinesh Kumar Singhania - vs. - Calcutta Stock Exchange Association Limited)

**5. 42005 (2) CHN 601** (Dinesh Kumar Singhania - vs. - Calcutta Stock Exchange Association Limited)

**6. 42005 (2) CHN 601** (Dinesh Kumar Singhania - vs. - Calcutta Stock Exchange Association Limited)

**7. AIR 1978 Madhya Pradesh 189** (Rikhiram Pyarelal and another - vs. - Ghasiram Dukalu)

**8. AIR 1932 Bombay 449** (Maharudrappa Danappa and others - vs. - Lakshman Hanmantappa and others)

Mr. Hari Narayan Mukherjee,  
Mr. Gouri Sankar Das

.... For the Appellants.

Mr. Sadananda Ganguly,  
Mr. Tapabrata Chakraborty

.... For the Respondents.

**TAPAN KUMAR DUTT, J.**

1.This court has heard the Learned Advocates for the respective parties. The facts of the case, very briefly, are as follows:-

2.The plaintiff filed Title Suit No. 48/2003 which was placed for hearing before the Court of the Learned Second Civil Judge (Junior Division), Ranaghat, Nadia. The case of the plaintiff/ respondent was that one Bela Rani Biswas was the owner of a certain plot No.408 as mentioned in the plaint which comprised of an area of 75 decimals of land. The said Bela Rani Biswas sold 10 decimals of land from the northern portion of the said plot No.408 to one Krishna Kanta Patitunda sometime in the year 1972 for valuable consideration. Sometime in the year 1973 the said Krishna Kanta Patitunda sold the said 10 decimals of land to the plaintiff for valuable consideration and delivered possession of the same in favour of the plaintiff. The remaining 15 decimals of land was retained by the said Bela Rani. The said property has been described in Schedule 'Ka' of the plaint. The defendants are the heirs and legal representatives of the said Bela Rani and the defendants sometime in the year 2000 constructed a tin shed in the said 'ka' schedule property and dispossessed the plaintiff. When the plaintiff objected to the acts of the defendants the defendants alleged that the plaintiff has no right, title and interest in the suit property. The plaintiff later on came to learn that through mistake Bela Rani has mentioned Dag No. 408/531 in

the deed executed in favour of the said Krishna Kanta Patitunda but actually the said 10 decimals of land in Dag No. 408 was transferred in favour of Krishna Kanta Patitunda. When Krishna Kanta Patitunda sold the suit property to the plaintiff the correct Dag Number was mentioned in the sale deed and also the boundaries were described correctly in the said sale deed. The plaintiff alleged that the said Bela Rani was not the owner of Dag No.408/531 and she never possessed any such Dag and as such the said Dag No.408/531 was never sold by the said Bela Rani. In fact, according to the plaintiff, 10 decimals of land in Dag No. 408 was sold by Bela Rani to the said Krishna Kanta Patitunda but taking advantage of the mistake in the title deed of Krishna Kanta Patitunda the defendants have dispossessed the plaintiff from the suit property. The plaintiff asked the defendants to demolish the room which are illegally constructed in the suit property and deliver up possession of the same in favour of the plaintiff but since the defendants refused to do the same the plaintiff had to file the said suit. The plaintiff has prayed for a decree for a declaration of the plaintiff's right, title and interest of the 'ka' schedule property of the plaint and also for a decree for recovery of possession in favour of the plaintiff after removal of the tin shed construction from the 'ka' schedule property of the plaint. Alternatively, the plaintiff prayed for a decree for declaration of the plaintiff's right, title and interest in respect of the said 10 decimals of land and a decree for partition.

3.The defendants contested the said suit by filing a written statement denying the material allegations made in the plaint and contended inter alia that the said Bela Rani was the original owner of the said plot No.408 comprising an area of 25 decimals of land and the said Bela Rani Biswas died sometime in March, 1995 leaving behind her only daughter Smt. Suchitra Sarkar. The said Bela Rani Biswas died in her own residential dwelling house and her daughter Suchitra Sarkar also died in the self-same property leaving behind her only daughter i.e. the defendant No.1. The

defendant No.2 is the husband of the defendant No.1. That on the death of Suchitra Sarkar the defendant No.1 has been residing in the suit property along with her husband and family and the defendants have been in long possession of the suit property by paying land revenue to the State Government. According to the defendants an Objection Case No.135 under Section 51A(1) of the West Bengal Land Reforms Act, 1955 was filed by the plaintiff before the Settlement Circle Office, Santipur, Nadia in respect of such 10 decimals of land in Plot No. 408 but the said objection was disallowed by the authority concerned as the plaintiff failed to produce the relevant documents before the authority concerned. The defendants further alleged that the original construction was made by Bela Rani Biswas which comprised of one big tile shed with verandah on two sides along with courtyard and shed for the shelter of cows. The said Bela Rani Biswas, according to the defendants, also installed one tubewell. The plaintiff subsequently filed an application before the B.L. & L.R.O., Shantipur, Nadia under Section 50 of the West Bengal Land Reforms Act, 1955 in respect of the said 10 decimals of the land but the said application was also disallowed. The defendants alleged that the name of Bela Rani Biswas was recorded in the R.S. Records of right and also in the Hal L.R. R.O.R. The defendants prayed for dismissal of the suit.

4.The said suit came up for final hearing when evidence was adduced on behalf of the respective parties. The Learned Trial Court by judgement and decree dated 6<sup>th</sup> April, 2004 dismissed the said suit on contest without costs. The Learned Trial Court found inter alia that from the oral evidence it will appear that it was never proved that the plaintiff was ever in possession of the suit property and the plaintiff has failed to prove that there was any cause of action to file the said suit. The Learned Trial Court further found that the plaintiffs also could not produce rebuttal evidence against the documents of possession especially the finally published R.S. and L.R. Record of Right. Accordingly, the Learned Trial Court dismissed the said suit.

5. The plaintiff filed an appeal against the decree passed by the Learned Trial Court. The said appeal was numbered as Title Appeal No. 38 of 2004 and was placed before the Learned Civil Judge (Senior Division) Ranaghat, Nadia, for hearing. The Learned Lower Appellate Court by judgement and decree dated 14<sup>th</sup> September, 2005 allowed the said appeal on contest with costs and thus set aside the judgement and decree passed by the Learned Trial Court. The Learned Lower Appellate Court declared that the plaintiff has right, title and interest over the 'ka' schedule property as mentioned in the plaint and the defendants were directed to deliver up khas possession of the said property by removing the 'tin-shed chhapra' within 30 days and in default the plaintiff was given liberty to execute the decree through court. The Learned Lower Appellate Court found that from the evidence it would appear that there is no denial regarding the execution of the document by Bela Rani Biswas in favour of Krishna Kanta Patitunda. The Learned Lower Appellate Court found that from the documentary evidence (Ext. 2) it will appear that Bela Rani Biswas executed a sale deed in favour of Krishna Kanta Patitunda in the year 1972 relating to the 10 decimals of land in Dag No. 408/531 but from the Ext. 3 it will appear that Krishna Kanta Patitunda sold 10 decimals of land from Dag No. 408 in favour of the plaintiff in the year 1973. The Learned Lower Appellate Court also found that from Ext.4, rent receipts dated 12.09.2003, it will appear that Khajna was paid by the plaintiff in respect of Dag No. 408. The Learned Lower Appellate Court has found that from the documentary evidence it will appear that the said Bela Rani Biswas was the raiyat in respect of 25 decimals of land in Dag No. 408. It has been specifically found by the Learned Lower Appellate Court that from the evidence it does not appear that Dag No. 408/531 belonged to Bela Rani Biswas. The Learned Lower Appellate Court also found that the B.L. & L.R.O. did not mutate the name in favour of the plaintiff in respect of the Dag No. 408 as the said authority did not find any document in favour of Krishna Kanta Patitunda



in so far as Dag No. 408 is concerned. It further appears from the impugned judgement that on behalf of the plaintiff it was argued before the Learned Lower Appellate Court that the plot number has been wrongly mentioned in the deed dated 24.01.1972. The Learned Lower Appellate Court found that the Dag No. 408/531 has been written mistakenly in place of Dag No. 408. The Learned Lower Appellate Court considered the deed being Ext. 3 particularly the description of the boundaries of the property sold through the said deed and came to the conclusion that the said Bela Rani Biswas had sold the said 10 decimals of land in Dag No. 408 to Krishna Kanta Patitunda and the deed was accordingly executed by her in favour of Krishna Kanta Patitunda. The Learned Lower Appellate Court found that even though the plaintiff did not pray for rectification of the Deed concerned, considering the materials on record there is no hindrance to declare title in favour of the plaintiff in respect of the suit property. It appears that considering the description of the boundaries of the property sold through Ext. 3 the Learned Lower Appellate Court came to the conclusion that the property sold through Ext. 2 must have been the said 10 decimals of land in Dag No. 408 but in Ext. 2 the Dag number has been mistakenly noted as 408/531 instead of Dag No. 408. The Learned Lower Appellate Court was of the view that the court should not remain blind to the facts and evidence of the case and deny relief to the plaintiff only on the ground that the plot number has been mistakenly mentioned in the sale deed concerned. According to the Learned Lower Appellate Court it can be assumed that Bela Rani Biswas actually sold away the suit property from plot No. 408. Accordingly, the Learned Lower Appellate Court found that the plaintiff has title in the suit property and the Title Appeal was allowed by the Learned Lower Appellate Court.

6.Challenging the judgement and decree passed in the said Title Appeal the defendants have preferred the instant Second Appeal.

7.The instant second appeal has been admitted on the following substantial questions of law

:

“I. Whether the Learned Court of Appeal below committed substantial error of law in reversing the judgement and decree passed by the Learned Trial Judge notwithstanding the fact that Bela Rani transferred Plot No. 408/551 to the vendor of the plaintiff, whereas the vendor of the plaintiff transferred Plot No.408 which he did not acquire by virtue of an earlier deed;

II. Whether the Learned Court of appeal below committed substantial error of law in declaring title of the plaintiff in respect of Plot No. 408 when undisputedly the admitted owner of Plot No. 408 did not transfer the property to the vendor of the plaintiff;

III. Whether the Learned court of appeal below committed substantial error of law in passing a decree for eviction against the heirs of Bela Rani, the original owner of Plot No. 408 notwithstanding the fact that Bela Rani never transferred the said plot No. 408 to anybody including the predecessor-in-interest of the plaintiff.”

8.The Learned Advocate on behalf of the defendants/appellants submitted that the plaintiff was never able to prove that she was ever in possession of the suit property, and the name of Bela Rani appears in the L.R. and R.S. records of right. The said Learned Advocate submitted that the Learned Lower Appellate Court erroneously proceeded on the basis that no dispute was raised on behalf of the defendants that Bela Rani executed the Sale Deed in favour of Krishna Kanta Patitunda in respect of Plot No. 408. The said Learned Advocate submitted that the defendant's case was that the said Bela Rani did not convey any portion of Dag No. 408 to the said Krishna Kanta Patitunda and the said Krishna Kanta Patitunda did not become the owner of the said 10

decimals of land in the said plot No. 408. It is also the case of the appellants, as submitted by their Learned Advocate, that the Learned Lower Appellate Court was wrong in holding that there was no need for rectification of the deed. The said Learned Advocate also submitted that the Learned Lower Appellate Court was wrong in relying upon the boundaries described on Ext. 3 since the boundaries described in Ext. 3 could not prove the identity of the property sold by Bela Rani to Krishna Kanta Patitunda. The said Learned Advocate submitted that since in the sale deed executed by the said Bela Rani in favour of Krishna Kanta Patitunda plot No. 408 has not been mentioned, the said Krishna Kanta Patitunda could not have obtained any right, title and/or interest in plot No. 408 and consequently the said Krishna Kanta Patitunda could not have transferred any right, title or interest in respect of any portion of plot No. 408 to the plaintiff. The said Learned Advocate submitted that the plaintiff did not acquire any right, title or interest in respect of any portion of the said plot No. 408 and/or the suit property. The said Learned Advocate submitted that the impugned judgement and decree should be set aside and the suit filed by the plaintiffs/respondents should be dismissed.

9.The Learned Advocate for the respondent submitted that the instant case does not involve any substantial question of law. He referred to Section 100(4)(5) of the Civil Procedure Code.

10.He cited a decision reported at **2009 (2) Supreme 728** (Koppisetty Venkat Ratnam (D) through LRs. - vs. - Pamarti Venkayamma) in support of his contention that the High Court would have jurisdiction to interfere with the impugned judgement under Section 100 CPC only if there is a substantial question of law involved in the matter and such substantial question of law has been stated in the memorandum of appeal. He submitted that a second appeal should not be permitted to become a third trial on facts. It is true that the substantial questions of law have not been

formulated in the memorandum of appeal in the way those have been formulated by this court while admitting the appeal but nonetheless the appellants have challenged in their memorandum of appeal the findings of the Learned Lower Appellate Court with regard to the alleged possession and title of the plaintiff/ respondent in respect of the suit property. The appellants have also challenged the validity of the sale deeds in question. A perusal of ground Nos. III, IV, V, VII, VIII, XI, XII, XVI and XX would indicate so. Thus the memorandum of appeal does contain the basis for formulation of the substantial questions of law. Of course, the drafting of the grounds in the memorandum of appeal leaves much to be desired. However, the present appeal is required to be heard on the substantial questions of law as formulated by an Hon'ble Division Bench of this Court. It thus appears that the said reports does not in any way help the plaintiff/respondent in the facts and circumstances of the present case.

11.The Learned Advocate for the respondent cited a decision reported at **AIR 2001 Supreme Court 2920** (Veerayee Ammal - vs. - Seeni Ammal) and submitted that the substantial questions of law formulated at the time of admission of the appeal do not satisfy the tests laid down in paragraph 8 of the said reports. In paragraph 8 of the said reports the Hon'ble Supreme Court was pleased to observe inter alia that the conditions specified in Section 100 CPC are required to be strictly fulfilled and that the second appeal cannot be decided on merely equitable grounds. He further submitted, by referring to paragraph 9 of the said reports, that where a point of law has not been pleaded a litigant should not be allowed to raise such point of law as a substantial question of law in a second appeal. It will appear from the facts and circumstances of the instant case as already discussed above and the grounds formulated as at the time of admission of the appeal that the present appeal is not being decided on merely equitable grounds. It appears that substantial questions of law are involved in this appeal and a decision on the grounds formulated at the time of

admission of appeal would substantially affect the rights of the parties. Thus the said reports cannot be of any assistance to the respondents.

12.The Learned Advocate for the respondents cited another decision reported at **AIR(SC) (1993) 2592** (Smt. Naseem Bano - vs. - State of U.P. and others) and referred to paragraph 11 of the said reports. It appears that the observations made by the Hon'ble Court in the said paragraph 11 of the said reports have no relevance in so far as the present case is concerned.

13.The Learned Advocate for the respondents cited another decision reported at **2006 (2) Supreme 649** (Venkatappa @ Moode (D) by LRs. - vs. - M. Abdul Jabbar & Ors.) and referred to paragraph 6 of the said reports. It appears that in the said case the first defendant admitted a certain plaint averment in the written statement but in the Special Leave Petition the legal representatives of the first defendant put forth a wholly different case which was contrary to the pleadings and evidence. In such circumstances the Hon'ble Court was pleased to observe that the appellants in the said reports were bound by the pleadings in the written statement filed by the first defendant and cannot be permitted to put forth a new case. In the instant case the appellants did not intend to put forth any new case and as such it is difficult to appreciate as to how the said reports can be of any assistance to the respondent in the facts and circumstances of the present case. It appears from the materials on record that in the present case the defendants from the very beginning of the litigation have been denying the alleged title and possession of the plaintiff in respect of the suit property.

14.The Learned Advocate for the respondents cited another decision reported at **2005 (2) CHN 601** (Dinesh Kumar Singhanian - vs. - Calcutta Stock Exchange Association Limited) and

referred to paragraph 15 of the said reports in support of his contention that in case of evasive denial by the defendant there can be constructive admission. The said Learned Advocate has submitted that the statements made in paragraph 5, 6, 11 and 12 of the plaint have been answered by the defendants/appellants by way of a vague denial in paragraph 31 of the written statement. The pleadings have to be read as a whole. The defendants have made out their case in the paragraphs preceding paragraph 31 of the written statement and it will not be proper to look into only paragraph 31 of the written statement and discard the other statements made in the written statement. If the written statement is read as a whole it cannot be said that the defendants have made a vague denial of the plaintiffs' case.

15. The Learned Advocate cited another decision reported at **AIR 1978 Madhya Pradesh 189** (Rikhiram Pyarelal and another - vs. - Ghasiram Dukalu) and referred to paragraph 6 and 8 of the said reports. It appears that the facts and circumstances of the case involved in the said reports were different from the facts of the present case and the facts of the present case are distinguishable from the facts of the said reported case. In the said reported case the vendor put the purchaser into possession of the property concerned and the name of the purchaser was also mutated in the relevant records and at the time of mutation the vendor did not oppose the mutation despite notice and mutation took place. In the present case the Learned Trial Court found that even from the oral evidence it cannot be said that the plaintiff was ever in possession of the suit property and even the time when the alleged dispossession took place cannot be ascertained. The Learned Trial Court found that the plaintiff could not prove her possession in the suit property at all. The Learned Trial Court also found that there is no evidence in rebuttal against the documents of possession specially finally published R.S. records and L.R. records. The Learned Lower Appellate Court found that the B.L. & L.R.O. did not allow mutation in favour of the plaintiff in respect of the property in Dag

No.408. In the written statement the defendants stated that the Objection Case No. 135 under Section 51(A)(1) of the said Act of 1955 filed by the plaintiff before the settlement circle office concerned in respect of the said 10 decimals of land in the said plot No.408 was disallowed by the authority concerned after a contested hearing. The defendant also stated that the subsequent application filed by the plaintiff before the B.L. & L.R.O. under Section 50 of the said Act of 1955 in respect of the said 10 decimals of land was also disallowed. Thus, considering the materials on record it cannot be said that the plaintiff has been able to prove that she was in possession of the property in dispute at any point of time. In such circumstances the said reports cannot be of any assistance to the plaintiff-respondent.

16.The said Learned Advocate cited another decision reported at **AIR 1932 Bombay 449** (Maharudrappa Danappa and others - vs. - Lakshman Hanmantappa and others). It appears from the facts and circumstances involved in the said reported case that the possession of the property in question described by its boundaries was given to the vendee and vendee had been in possession of it for some considerable time. In the present case the plaintiffs' alleged possession in the suit property was not proved. Thus, factually the said reported case is distinguishable from the facts and circumstances of the instant case.

17.It appears that the Learned Lower Appellate Court laid much emphasis on its finding that in the written statement the defendants did not mention that Bela Rani did not execute any deed in favour of Krishna Kanta Patitunda relating to the property in dispute. It appears that the Learned Lower Appellate Court erroneously emphasized this aspect of the matter since it is for the plaintiff to prove her case in the plaint by adducing proper evidence. The plaintiff also could not prove her alleged possession in the suit property. Thus, the intention of the parties to the purported deed

being Ext.2 does not appear to be sufficiently clear. That apart, in Ext. 2 the boundaries of the property purported to be sold have not been described. This makes the position even worse and it further weakens the plaintiff's case. It is surprising that the said Krishna Kanta Patitunda did not subsequently make any attempt to rectify the deed concerned. This court is of the view that the Learned Lower Appellate Court was in error in declaring the title of the plaintiff in respect of the suit property at plot No. 408 when the vendor of the plaintiff had purchased plot No. 408/531 from the said Bela Rani. This Court is of the view that the Learned Lower Appellate Court was also in error in proceeding on the basis of assumption that the said Bela Rani sold away a portion of plot No. 408 to the said Krishna Kanta Patitunda. The Learned Lower Appellate Court should not have granted any relief to the plaintiff in view of the fact that the plaintiff's vendor could not have transferred the suit property to the plaintiff when such vendor himself did not obtain any title to the suit property, at least, without the rectification of the deed i.e. Ext. 2.

18. In view of the discussions made above the impugned judgement and decree passed by the Learned Lower Appellate Court is set aside and the appeal is allowed. The suit filed by the plaintiff-respondent stands dismissed.

19. There will, however, be no order as to costs.

20. Urgent Xerox certified copy of this judgement, if applied for, shall be given to the parties on compliance of usual formalities.

**( TAPAN KUMAR DUTT, J. )**



