

06.09.2021
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ns Ct.04

S.A.T. 378 of 2002

Anjali Dutta.
Vs.
Sri Bejoy Balmiki & Ors.

Mr. Pinaki Ranjan Mitra For appellant.

Mr. Mitra, learned advocate appears on behalf of appellant and submits, his client was defendant in the suit. Plaintiffs had claimed declaration of right of user of a pathway, permanent, prohibitory and mandatory injunctions. Irrespective of concurrent findings by the Courts below, this Court should admit the appeal on a question of law arising on effect of mention in schedule to the deed.

We have perused the judgments. It appears, both defendant and plaintiffs had purchased from same person. Defendant had purchased first. Plaintiffs had thereafter purchased. The respective properties purchased were described in schedules to the plaint as 'kha' and 'ka'. The pathway was described as 'ga'. All the deeds were tendered in evidence. Both Courts have given their concurrent appreciation regarding contents of the deeds. In addition the trial Court quoted deposition of defendant no.2 as D.W.1, to have said in cross examination:-

“There is no mention in the purchase deed of my wife that the suit passage was given to us by our vendor. The passage was granted for egress and ingress to the property sold to my wife by her vendor.It is a fact that the suit passage was not sold to my wife by her vendor, but it was granted for user.”

The lower appellate Court also relied on this bit of evidence.

It is clear, defendant first purchased ‘kha’ schedule property with right of ingress and egress through ‘ga’ schedule property, from her vendor. Plaintiffs thereafter purchased ‘ka’ schedule property with easement right of passage over ‘ga’ schedule property. On these concurrent findings of the Courts below, we don’t see any question of law involved for admission of this appeal.

SAT 378 of 2002 is dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)