

06.09.2021

Item No. 17

Ct. No. 04

RP

S.A.T 3888 of 2004

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IA No.CAN 2 of 2004 (Old No.CAN 9437 of 2004)

(Via Video Conference)

Pandit Jeewan Lal Maliah (Deceased)

**Represented by His legal heirs and representatives
& Ors.**

Vs.

Santosh Kr. Adhikary

Mr. Soumalya Ganguli

... for appellants

Mr. Ganguli, learned advocate appears on behalf of substituted appellants and submits, the trial Court correctly dismissed the suit but the lower appellate Court erred on two counts in reversing the judgment and decreeing it. Firstly, the suit was barred by limitation and secondly, there could not be decree for specific performance based on mere money receipts, which did not mention the purpose of payment.

From the decree in original suit we find, the suit was filed on 13th February, 1980. This was found also by the lower Appellate Court, to hold that the suit was not barred by limitation. The money receipts are dated in August, 1977. The suit, though

originally for permanent injunction but was later amended to become a suit for specific performance. Amendment relates back to the date of the suit. On this count there is not involved a question of law.

Plaintiff's case, as more elaborately stated by the trial Court in its judgment, is that he was licensee in respect of the tank. Defendant no.1 had declared his intention to sell it in August, 1977, originally for Rs.9000/- and ultimately for Rs.12,000/-. The money receipts marked exhibits show aggregate payment of Rs.11,500/- by year 1979.

In reversing the judgment, the lower appellate Court noticed that defendant no.1 had appeared through his constituted attorney, Manoranjan Samaddar to submit written statement, denying allegations in the plaint. Said constituted attorney is the person, to whom plaintiff claimed to have paid almost the entire consideration. In this context we reproduce below the lower appellate Court's appreciation of said defendant's deposition in cross-examination.

"But we get from cross-exam that Manoranjan Samaddar was his empowered Attorney as it was not possible for him to look after the

entire estate of Raj Bari. He has further admitted that the plaintiff was his praja. He has further stated that before 10 years many persons used to come before him, and he used to give words to them. He has further stated that no staff for his estate complained against Manoranjan Samaddar regarding illegal connection of money. He has further stated that he cannot remember whether he promised any person in respect of transfer of suit tank. He did not remember whether any talk of such sell was going on with the plaintiff. He has further stated that Manoranjan Samaddar though retired from the estate he is still alive. He has further stated that Sri Samaddar is his obedient staff. He has no knowledge as to whether Sri Samaddar accepted Rs.12,000/- from the plaintiff or not.”

While the trial Court made error regarding date of filing of the suit and consequently it's finding on limitation, the lower appellate Court went on to adjudicate the controversy, in light of defendant no.1 having had denied knowledge of the transaction through his constituted attorney and later deposed that said person had been entrusted to look after the

estate. The written statement was filed in dealing with allegations in the plaint. It was done through the person entrusted. Subsequent oral testimony was ignorance of the agent's activity and lack of his authority to enter into the transaction. The lower appellate Court found defendant no.1 was Raja and plaintiff was Praja. This appreciation of the evidence, as the final Court of fact, does not show involvement of any question of law, arisen for admission of the appeal.

SAT 3888 of 2004 along with IA No.CAN 2 of 2004 (Old No.CAN 9437 of 2004) are dismissed.

(Arindam Sinha, J.)

(Sugato Majumdar, J.)