

21.09.2022
SL No.34
Court No.8
(gc)

SA 70 of 2016

**Sri Rajendra Lal Hazra & Ors.
Vs.
Smt. Shanti Devi Hazra**

The appellants are not represented, nor any accommodation is prayed for on behalf of the appellants.

The second appeal was presented in the year 1999. However, no attempt was made to move the second appeal. This appeal first appeared in the list of 9th September, 2022 and thereafter continued to appear in the list. The appellants had sufficient notice of the listing of the appeal before this Bench.

The appellate decree dated 19th November, 1998 affirming the decree of the Trial Court dated 31st May, 1993 in a suit for recovery of khas possession and damage. The suit was decreed in favour of the plaintiff on contest against the defendant Nos.1, 4 and 5 and ex parte against the defendant No.2 with costs. The suit, however, was dismissed against the defendant No.6 on contest. The plaintiff obtained a decree for recovery of khas possession and defendant Nos.1, 2, 4 and 5 in respect of 'ka-1' schedule property and also damages against the defendant Nos.1, 2, 4 and 5. The genesis of the title is the deed of gift. It was marked as Exhibit-10. The donor was Smt. Minati Chakraborty in favour of the plaintiff on 2nd

July, 1986 in respect of 'ka' schedule property. The contention of the plaintiff was that Minati Chakraborty possessed 'ka' schedule property along with other properties which would be evident from registered sale deed (Exhibit-3) from the defendants on 10th October, 1985 and thereafter the khas possession thereof on 7th December, 1985 through the Court bailiff in Execution Case No.2/83. Thereafter, Minati Chakraborty gifted 'ka' schedule property including the 'ka-1' on 27th June, 1986 by a registered deed of gift (Exhibit-10) before the execution of the said deed of gift. The defendants trespassed into the 'ka-1' schedule property on 10th December, 1985 forcibly after breaking open the padlock and since then the defendants were occupying the 'ka-1' schedule property illegally without right as trespassers. The aforesaid exhibits were taken into consideration and admitted to evidence. It would appear from the aforesaid exhibits read with the oral evidence that the entire property mentioned in Exhibit-3, except 'ka-1' schedule property was taken possession by Minati Chakraborty, in fact, she got khas possession from the Court bailiff. P.W.4 corroborated the evidence of the plaintiff. The defendants disputed the claim on the ground of their possession but they could not prove any title in respect of 'ka-1' schedule property.

In view of such unimpeachable evidence, we do not find any reason to interfere with the impugned order passed by the Trial Court as well as by the Appellate

Court. There is no substantial question of law involved in the second appeal.

Accordingly, the second appeal being SA 70 of 2016 stands dismissed at the admission stage.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)