

21.09.2022
SL No.33
Court No.8
(gc)

SA 57 of 2016

**Kashi Prosad Jaiswal
Vs.
The Municipal Corporation of Calcutta**

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

The appellate decree dated 31st May, 1999 affirming the decree of the Trial Court dated 27th January, 1998 is the subject matter of the second appeal.

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 appellant had sufficient notice of the listing of the appeal before this Bench.

In a suit for permanent and mandatory injunction filed by the plaintiff before the Trial Court was dismissed on ascertaining the fact that the property belonged to the Central Government. The Orphangunge Market with all its adjoining lands initially belonged to the Central Government and subsequently it was transferred to the State Government. The plaintiff claimed that he made construction over the land of the Central Government on the basis of a settlement dated 6th March, 1959 by the Market Superintendent of Orphangunge Market with the

plaintiff as a monthly tenant. In order to establish that with notice to the respondent, the plaintiff relied upon Annexure-A to Annexure-M. The plaintiff alleged that in such circumstances, the service of notice by the C.M.C under Section 416 of the C.M.C. Act, 1951 was illegal and invalid. It transpired that although he relied upon few documents as Annexure-A to M but those documents were not marked as Exhibits and were not proved in accordance with law. C.M.C. relied upon Section 414(4) of the C.M.C. Act, 1951 to show that the suit is not maintainable as the remedy to approach the Tribunal constituted under Section 391(B) from the date of the order directing demolition.

Both the Trial Court and the Appellate Court had dismissed the suit on the aforesaid ground. We do not find any reason to interfere with the finding of both the Courts below.

Accordingly, the second appeal fails at the admission stage.

The second appeal being SA 57 of 2016 stands dismissed.

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.)