

28.02.2022
SL No.8
Court No.8
(gc/ar)

SA 40 of 2020
With
CAN 3 of 2019
(Old No: CAN 11996 of 2019)

M/s. Tirupati Fiber Products
Vs.
Gita Rani Roy & Ors.

(Via Video Conference)

Mr. Uttiya Ray,
Mr. Anirban Ghosh,
...for the Appellant.
Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,
...for the Respondents.

Re: CAN 3 of 2019
(Old No: CAN 11996 of 2019)

This is an application for expunging the name of Gita Rani Roy, respondent No.1, from the array of respondents. The said respondent died during the pendency of the appeal.

The department is directed to amend the cause title by expunging the name of said Gita Rani Roy.

Accordingly, the application being CAN 3 of 2019 (Old No: CAN 11996 of 2019) is thus allowed.

Re: SA 40 of 2020

The second appeal has come up for admission.

The second appeal is arising out of the judgment and decree dated 25th June, 2019 passed by the learned Additional District Judge, 3rd Court, Howrah in Title Appeal No.221 of 2018 affirming the judgment and decree

dated 14th August, 2018 by the learned Civil Judge (Junior Division), 6th Court, Howrah in Title Suit No.61 of 2012.

We have heard the learned Counsel for the parties.

The learned Counsel for the appellant submits that the second appeal is required to be admitted as both the Courts below have failed to take into consideration that the appellant became a direct tenant and/or raiyat under the State of West Bengal with effect from 9th September, 1980 by virtue of Section 3A of the West Bengal Land Reforms Act, 1955. It is further submitted that both the Courts have failed to take into consideration the aforesaid provision of law and decreed the suit in favour of the respondents. It is also submitted that even if it is assumed for the time being that the relationship of the parties is governed by the provision of Transfer of Property Act, having regard to the fact that it is a lease for manufacturing purposes, then six month's notice should have given and as such, the suit should have been dismissed for defective notice.

The second appeal can be admitted provided it involves substantial question(s) of law. We now need to ascertain from the materials on record as to whether a case has been made out for admission of the second appeal on substantial question(s) of law.

We have carefully gone through the judgment of the Trial Court as well as the First Appellate Court. Although the Trial Court may not have extensively dealt with the

point urged before us but we find from the judgment of the First Appellate Court that the First Appellate Court had addressed the aforesaid issues extensively. In fact, in the suit, the defendant had admitted his possession in respect of the suit property on the basis of a lease agreement dated 1st August, 1979 wherein it is stipulated that the period of lease would be of 9 years commencing on and from 1st August, 1979 to 31st July, 1988. The said lease deed permitted the appellant to use the said property for the purpose of setting of a factory and for that purpose to erect, construct and maintain such engines, machinery and other things necessary for the purpose of preparing, storing and other conveniences on the said land as may be necessary. The lease deed was marked as exhibit. In fact, the lease rents were also marked as exhibits to show that the relationship of the parties was of lessor and lessee. The appellant although filed rent receipts but did not tender his rent receipts during trial and, accordingly, the relationship of the parties as lessor and lessee was accepted by both the Courts below on the basis of the counterfoil of the plaintiffs marked as Exhibit-2 showing receipt of payments in terms of the lease deed. The submission of the appellant that vesting of the land in question is automatic by operation of law is not plainly acceptable as the land was never identified as a non-agricultural land at the relevant record nor the defendant on whom the onus lie to show that at the time when the

lease agreement was entered into, the appellant was a raiyat under the State of West Bengal on the basis of Section 3A of the Land Reforms Act, 1955 was produced. During cross-examination of D.W.2, the said witness stated that he would file documents to show that the suit property has been vested in the State of West Bengal and to show that the said defendant became raiyat under the State of West Bengal but he was unable to produce any document in respect thereof nor he could produce any document to show that the appellant had paid rent as raiyat under the State of West Bengal. On the contrary, the said witness had accepted that Kartick Chandra Roy inducted the appellant in the suit property. In spite of assuring the Trial Court that necessary documents would be filed, the appellant failed to file any document or produce any record in support of his claim. The First Appellate Court considered the said issues and rejected the contention of the appellant on the ground that the appellant could not produce any document to show that the said property was used for manufacturing purposes. The First Appellate Court relying upon the decision of the Hon'ble Supreme Court to ascertain the meaning of manufacturing purpose, has rightly observed that in absence of any document to show that any plant and machinery was installed is a kind of manufacturing activities, being carried out from the suit property with the use of labour or machine and complete transformation of

the character of the product from its original character, it can be safely presumed that the suit property was never used by the appellant for manufacturing purpose.

The civil suit is to be decided on the basis of the preponderance of probabilities after proper assessment of the evidence on record. On the basis of a concurrent finding of facts that the property did not vest in the State of West Bengal and that the property was never used as manufacturing purpose, we do not find any reason to admit the second appeal on any substantial question of law.

Accordingly, the second appeal, being SA 40 of 2020, stands dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)