

**S.A. 93 OF 2018**

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Smt. Rita Rani Das & Ors.

Vs.

Sri Aswini Acharya & Ors.

Mr. Amit Baran Dash

...For the Appellants

The second appeal has come up for admission.

In a suit for declaration and permanent injunction the trial court decreed the suit in part in respect of plot no.3905 and denied any right, title and interest in respect of plot no. 3905/5891.

The trial court has made a detailed examination of the documents produced by the plaintiffs in respect of their claims in the suit and declined to pass a decree in respect of plot no. 3905/5891 on the ground that any deed of the predecessor-in-interest of the plaintiff i.e. Sarat Ch. Das was not produced or filed by the plaintiffs. The trial court has relied upon the Record of Rights which was exhibited and marked as 'Ext. 1', which clearly shows that the plaintiffs have no possession over the plot no. 3905/5891. The claim was rejected on two-fold grounds viz. failure to produce any deed of the predecessor-in-interest of the plaintiffs and non-inclusion of the name of the plaintiffs in the Record of Rights. If Sarat Ch. Das has no title to the said property then the plaintiffs who are claiming title through Sarat Ch. Das could not have

better title. Apart from the aforesaid, an appeal was preferred after five years without offering any sufficient cause.

We discussed in short the merits of the matter as the learned counsel for the appellants has submitted that a meritorious appeal should not be dismissed merely on the ground of limitation. We could have admitted the second appeal overlooking the delay of almost five years provided a case of merit is made out by the appellants.

Having regard to the facts that the appeal does not have any substantial question of law and findings of fact by the trial court has remained unshaken, we are not inclined to admit the second appeal. Moreover, it is apposite to mention that the delay of five years has been tried to be explained by contending that the appellants were ignorant to the decree.

However, we do not find any reason to admit the second appeal.

Accordingly, the second appeal is not admitted and, accordingly, dismissed.

**(Ajoy Kumar Mukherjee, J.)**

**(Soumen Sen, J.)**