

Item-74. 22-08-2022

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Ct. 8

SA 62 of 2013
CAN 1 of 2011 (old CAN 1958 of 2011)
CAN 5 of 2022

Narendra Nath Das, since deceased,
represented by his legal heirs and representatives,
namely, Kalipada Das & Anr.
Versus
Subhasis Nayak & Ors.

Mr. Asif Hussain, Adv.
Ms. Labani Pan, Adv.

...for the appellants

Mr. Golam Mustafa, Adv.
Mr. Tarasankar Samanta, Adv.
Mr. Samirul Sarkar, Adv.

...for the respondents

We have heard the learned Counsel for the appellants.

The second appeal has come up for admission. The appeal is directed against a confirmatory decree passed by the Appellate Court by which the counter claim of the defendants for recovery of khas possession was allowed.

A second appeal can be admitted provided a substantial question of law is involved either in the form of erroneous application of law or inadmissible evidence being taken into consideration or perversity. The concurrent findings of fact normally are not interfered unless it, *ex facie*, appears from the evidence of such findings is not possible on the basis of the documents available on record. In the instant case, the appellant claimed a decree for declaration of permanent injunction.

According to the appellants, plaintiff perfected his title over a period of time and in this regard, Mr. Arif Hossain, learned Counsel representing the appellants has drawn our attention to the

earlier suits decided between the parties. There is no dispute that in an earlier proceeding, a suit was decreed in favour of the defendants which forms the subject matter of the present suit and the appeal against the said decree was dismissed.

The defendants filed an execution application in the year 1988. The said execution application was, however, not pursued as would be evident from the order passed in the petition filed on 1st April, 1995 under section 151 of the Code of Civil Procedure on the ground that the plaintiffs approached the defendants for some time so as to enable them to hand over the possession of the property in question. It appears that between 1988 and 1995 in or about October, 1990, out of 'Ka' and 'Ka/1' schedule property, the appellant delivered the suit land to the defendants amicably except 'A' schedule property. The defendants contended that on the request of the plaintiffs/appellants, the time was extended for delivering of 'A' schedule property. However, since the appellants were not handing over possession of the property within a reasonable time, the defendants on 10th May, 2005 revoked the licence of the plaintiff and filed a counter claim in the suit for recovery of possession in respect of 'A' schedule property. During trial it transpired that excepting 'A' schedule property, other properties which form part of earlier suit and also part of execution proceeding, were handed over to the plaintiff and moreover, the plaintiff, by any evidence, failed to prove his right, title and interest in the suit property or that his possession in respect of the said property was continuous, uninterrupted and hastily. Undoubtedly, the defendants/respondents were able to produce evidence of title in respect of the property in question.

The Trial Court has rightly observed that the burden lies on the plaintiff to establish that the possession of the appellants in respect of the property in question is continuous, uninterrupted and hostile for the period of 12 years in order to claim a decree based on adverse possession. The defendants, on the contrary, were able to establish their ownership in respect of the 'A' schedule property and in any event the plaintiff had better title than that of the defendants in respect of the suit property. The findings based on such evidence cannot be said to be perverse. The appellants having failed to establish that the plaintiff had perfected the title of remaining in possession to claim benefit of Articles 64 and 65 of the Limitation Act coupled with the fact that his initial possession was permissive and supports the views expressed by the Trial Court as well as by the First Appellate Court, in our considered opinion, the second appeal does not call for any substantial question of law.

The second appeal stands dismissed. However, there shall be no order as to costs.

In view of the dismissal of the appeal, all connected applications are accordingly, dismissed.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)