

DL. July 22,
17. 2022

S.A. 18 of 2015

Bimala Saha & ors.
Vs.
Bela Rani Kundu & ors.

None appears on behalf of the appellants, nor any accommodation is prayed on their behalf. The appellants were also remained unrepresented on July 11, 2022. The present appeal was presented in the year 2013 without any effort or desire to move the appeal for admission. The matter was dismissed for default earlier and subsequently restored. However, in view of the earlier order dated July 11, 2022, we propose to decide the question of admission of the second appeal.

The present appeal has arisen out of a judgment and decree of affirmance dated December 17, 2012 passed by the learned Additional District Judge, Second Court at Krishnagar, Nadia, in Title Appeal No. 42 of 2008 arising out of judgment and decree dated January 29, 2008 passed by the learned Civil Judge (Junior Division), Second Court at Krishnagar, Nadia, in Title Suit No. 3 of 1995, which is a suit for eviction, recovery of khas possession and mesne profit.

Both the courts below, on the basis of the evidence – oral as well as the documentary – adduced by the parties, have arrived at a finding that the defendants/appellants are the tenants in respect of the property in suit but not under the legal heirs of Tarapada Chattopadhyay. The original defendant contended that he was not a tenant under the legal heirs of Satyahari and never paid

any rent to them. It was further contended that he and his sons purchased the share of Sasthidas and half share of Prandas Chattopadhyay, who are the legal heirs of Tarapada Chattopadhyay and became the co-owners of the property in suit. The plaintiffs contended that after demise of Satyahari, who was the exclusive owner of the suit plot, the suit plot belonged to his legal heirs, namely, Swapan, Shyamal, Agamoni and Narayani and that after purchase from the aforesaid persons, the plaintiffs became the exclusive owners of the property in suit.

One of the issues that arose before the trial court as to whether the defendants are the tenants under the plaintiffs or under the legal heirs of Tarapada. The relationship of landlord and tenant between the appellants and respondents found to be proved from Exhibit 3-series which is rent receipts issued by Shyamal Chattopadhyay in favour of the original defendant, namely, Bidhubhusan Saha. The defendants claimed that they are the tenants under the legal heirs of Tarapada, which could not be proved by producing any documentary evidence or any other reliable evidence. The Defendants' witness no. 2, who is one of the sons of Tarapada, also failed to establish that the defendants were the tenants under him.

The concurrent findings of facts arrived at by both the courts below on the basis of the evidence adduced by the parties that the appellants are not the tenants under the legal heirs of Tarapada cannot be said to be perverse and does not call for any interference in the second appeal. Moreover, we do not find any substantial question of law involved in this appeal for which the

same is required to be admitted.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the appeal, nothings remains to be decided in the connected applications filed under DCAN 4164 of 2013 and CAN 7204 of 2016 and those are also dismissed.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Siddhartha Roy Chowdhury, J.)