

10.01.2022
Court No.8
Item No.20
SB / TGH

SA 116 of 2021

(via video conference)

In the matter of : Shrimati Sabita Ghosh & Ors.

Mr. Rabindranath Mahato For the Appellants

This second appeal is directed against the judgment and decree dated 28th August, 2020 passed by the learned Civil Judge, Senior Division, affirming the judgment and decree dated 18th September, 2018 passed by the learned Civil Judge, Junior Division, 2nd Court at Katwa, Burdwan, in Title Suit No. 132 of 2012.

Mr. Rabindranath Mahato, learned Counsel appearing on behalf of the appellants, has submitted that both the Courts have committed error in law in dismissing the suit on a misconception of law inasmuch as the learned Judges ought to have directed the respondent authorities to produce the documents relating to surrender of dealership in accordance with the pleadings and having not done so, the decree of affirmation has caused serious miscarriage of justice.

The argument of Mr. Mahato turns of the aforesaid issue being answered in favour of the appellants.

The appellants are the legal heirs of one Gyanendra Nath Ghosh, since deceased. Gyanendra died intestate on 26th

April, 2007 leaving behind the plaintiffs as his legal heirs and representatives. This suit was instituted by such legal heirs in the year 2012 claiming declaration and permanent injunction against the defendants in respect of the ration shop and the licence alleged to have been held or stood in the name of Gyanendra during his lifetime. During trial it had come up that since 29th November, 1973 the licence in respect of the said ration business was deposited by respondent no.5 till the death of Gyanendra. It further transpires that during lifetime Gyanendra, under certain profit sharing arrangement, received certain amount from respondent no.5. Over these years, the licence never stood in the name of Gyanendra. Both the Courts, accordingly, had arrived at a finding that having regard to the long passage of time since 1973 till the death of Gyanendra, the licence never stood in the name of Gyanendra, it shall be presumed that Gyanendra is not the dealer. Moreover, the licence is not heritable in terms of the West Bengal Public Distribution System (Maintenance and Control) Order enacted by the Governor in exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955.

In view of the fact that the dealership licence of a ration shop is non-heritable and the evidence, both document and oral, shows that Gyanendra had no right since 29th November, 1973 and also having regard to the evidence of PW 1 admitting that he collected ration from Biswanath for almost last 20 years, we find that there is no substantial question of law involved in this appeal.

Accordingly, the appeal stands dismissed.

However, there shall be no order as to costs.

(Kesang Doma Bhutia, J.)

(Soumen Sen, J.)