

DL. September
20. 22, 2022

S.A. 358 of 2016

Sudip Kumar Mondal

Vs.

Biswamoy Roy

The present appeal is of the year 2014, but no attempt was made to move the same after presentation. The appeal was kept pending for almost eight years before we directed this matter to be listed on September 9, 2022. Since then the matter is appearing in the list. In spite of sufficient notice, the appellant is not represented, nor any accommodation is prayed for. However, we propose to consider the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmation dated August 29, 2013 passed by the learned Civil Judge (Senior Division) at Baruipur, South 24-Parganas, in Title Appeal No. 10 of 2009 arising out of judgment and decree dated December 10, 2008 passed by the learned Civil Judge (Junior Division), Second Court at Baruipur, in Title Suit No. 54 of 2003 is the subject matter of challenge in this appeal.

The brief fact is that the plaintiff/appellant, namely, Sudip Kumar Mondal, purchased the property in suit by way of a registered deed of sale dated November 21, 1988. After purchase, the plaintiff/appellant obtained a sanctioned plan on March 6, 1990 for construction and again on November 18, 2004 obtained another sanctioned plan for construction of a new shop. Further case

of the plaintiff/appellant was that the house of the defendant no. 1/respondent no. 1 is situated to the eastern side of the plaintiff's house. The plaintiff constructed a boundary wall to the eastern side of the property in suit and thereafter raised construction leaving 3 ft. vacant space from the boundary wall as per West Bengal Municipal Rules so that there is no obstruction of air and light.

The plaintiff/appellant alleged that the defendant no. 1, without the sanctioned plan and without leaving any vacant space, constructed his stair case room which was extended upto the boundary wall of the plaintiff to the eastern side of the property in suit. In spite of repeated requests of the plaintiff for removal of such construction, the defendant no. 1 started construction of the first floor over the said stair case room.

The plaintiff/appellant alleged that if the defendant no. 1 allowed to raise construction over the stair case room, air and light would not enter into the plaintiff's house through eastern side. The plaintiff further alleged that in spite of lodging complaints, the municipal authority did not take any action.

This was the genesis of the suit in which the plaintiff, inter alia, prayed for removal of illegal construction made by the defendant no. 1.

The defendant no. 1/respondent no. 1 contested the suit by filing written statement wherein it was stated that the defendant no. 1 is the owner of 2 cottah 2 chhitak 18 sq. ft. of land in the eastern side of the property in suit by reason of purchase from the heirs of Biswanath Ghosh Hatui by way of a registered deed of purchase being no. 4858 of 1987. Thereafter on the basis of the

sanctioned plan, the defendant no. 1 raised a two-storied building on the said plot of land and started staying therein. The adjacent western portion of the property in suit was purchased by the plaintiff later on. The defendant no. 1 alleged that the plaintiff in violation of the municipal rules raised construction thereby obstructing the air and light to the house of the defendant no. 1.

During trial it transpired that the plan sanctioned in favour of the defendant no. 1 was much prior than that sanctioned in favour of the plaintiff/appellant. The defendant no. 1 constructed the stair case room in the year 1997. Admittedly, the plaintiff/appellant did no raise any objection till 2003.

The trial court as well as the first appellate court dismissed the suit having not found any illegality in construction raised by the defendant no. 1/respondent no. 1 and on the ground of acquiescence of the plaintiff/appellant, who allowed such construction. By reason of passage of time a valuable right has accrued in favour of the defendant no. 1/respondent no. 1 to enjoy such construction. In other words, when the said construction was allowed to remain for seven long years without demur the allegation of obstruction of air and light to the portion of the plaintiff now appears to be an afterthought. It is barred by estoppel and acquiescence.

The concurrent findings of fact arrived at by the first appellate court as well as by the trial court based on evidence adduced by the parties does not call for any interference. As such, 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.

There will be no order as to costs.

(Soumen Sen, J.)

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(Uday Kumar, J.)