

Item-14. 27-09-2022

sg

Ct. 8

SA 287 of 2016

Najiruddin Mia

Versus

Hriday Mukherjee & Anr.

The matter was adjourned on the earlier occasion on the prayer of the learned Counsel for the appellant. The appellant is not represented. The appeal was tendered in the year 2015 and thereafter no attempt was made to move the appeal. This matter is appearing in the list for quite sometime. No prayer for adjournment is made on behalf of the appellant.

The decree of the trial court dated 25th September, 2013 was affirmed by the appellate court on 15th May, 2014. The plaintiff filed a suit for mandatory injunction. The suit was dismissed by the trial court. According to the plaintiff, the suit property was purchased in the name of the defendant no.1 and proforma defendant no.2. But the consideration money was paid by the plaintiff because of some unavoidable circumstances. The dispute arose between the parties on account of certain brokerage.

The said dispute was claimed to have been resolved by executing an agreement on 13th October, 2004. Since the defendant no.1 was not complying the terms of the agreement, the plaintiff filed a suit for mandatory injunction directing the defendant no.1 to execute the sale deed in favour of the intending purchaser to be bought by the plaintiff or in favour of the plaintiff in respect of B schedule property which is part of A schedule property as per the agreement entered into between the parties on 13th October, 2004. The plaintiff could not produce the original

agreement. Some evidence was laid to show that in spite of best efforts, the original copy of the agreement could not be produced. However, the observation of the trial court in this regard is pertinent, there cannot be any doubt that even if such document is taken into consideration to hold in obligation of the defendant towards plaintiff for execution and registration of the sale deed for B schedule property upon receiving of a sum of Rs.20,000/-, still then, such problem would remain as there is no description of the B schedule property. There is no iota of evidence that the plaintiff purchased a suit property in the name of the defendant no. 1 and proforma defendant no.2 after giving full consideration money. In order to claim ownership, the plaintiff was required to be proved that he had paid the consideration amount and he also has to prove the agreement over which he is claiming now namely the B scheduled property. On such consideration, the trial court dismissed the suit.

The first appellate court concurred with the said finding as the appellant during his cross-examination has stated that there is no agreement between him and the defendant no.1 and he also admitted the absolute title of the defendant no.1 in respect of the suit property.

On such concurrent finding of facts of both the courts and the evidence adduced, we do not find any reason to admit the second appeal. The second appeal is dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)