

DL. July 26,
19. 2022

F.M.A. 146 of 2016

Sri Dipankar Roy

Vs.

Puspa Rani Roy & ors.

The appellant is not represented, nor any accommodation is prayed on his behalf. On the earlier occasion also the appellant remained unrepresented. However, we propose to decide the question of admission of the appeal on the basis of the materials available on record.

The present appeal has arisen out of an order dated September 30, 2015 passed by the learned Civil Judge (Senior Division), Second Court at Barasat, North 24-Parganas, in Title Suit No. 15 of 2014, in connection with an application filed by the plaintiff/appellant under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure. The learned trial judge rejected the application for temporary injunction on the ground that the said application is barred by the principles of res judicata.

It appears that the defendant/respondent no. 1 purchased the A-scheduled property from one Makhan Chandra Lodh by a registered deed of sale bearing no. 3509 in the year 1975 and thereafter she purchased the B-scheduled property from the defendant no. 4, namely, Nepal Chandra Paul, by way of another registered deed of sale bearing no. 5426 in the year 1990. The defendant no. 4 claimed to have purchased the B-scheduled property from Makhan Chandra Lodh by a registered deed of gift

bearing no. 3508 in the year 1975.

The plaintiff/appellant alleged that the father of the plaintiff and the defendant no. 3, namely, Jagadish Chandra Roy, incurred the expenses for purchasing the “A” and “B” scheduled property in the name of the defendant no. 1 and the defendant no. 4, who is the husband of the sister of the defendant no. 1. As such, it has been alleged that the defendants no. 1 and 3 became the ostensible owners and the defendant no. 3 became the real owner in respect of the “A” and “B” scheduled property.

The learned trial judge observed that the plaintiff has failed to establish that the defendant no. 3 had sufficient funds to purchase the “A” and “B” scheduled property. The plaintiff/appellant having been failed to establish that the defendant no. 3 had sufficient funds to meet with the consideration amount for purchasing the “A” and “B” scheduled property, the impugned order does not suffer from any infirmity.

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

In view of dismissal of the appeal, nothing remains to be decided in the application for injunction filed under CAN 11487 of 2015 and the same is accordingly disposed of.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Siddhartha Roy Chowdhury, J.)

