

DL. September
46. 23, 2022

S.A. 36 of 2022

Maya Chongdhar & ors.

Vs.

Bhaswati Mondal

The present appeal is of the year 1998, but no attempt was made to move the same after presentation. The matter was listed on September 9, 2022. Since then the matter is appearing in the list. In spite of sufficient notice, the appellants are 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 affirmance dated September 30, 1997 passed by the learned Additional District Judge, Second Court at Burdwan, in Title Appeal No. 34 of 1997 arising out of judgment and decree dated January 31, 1997 passed by the learned Munsif, Second Court at Burdwan in Title Suit No. 60 of 1996, which is a suit for declaration and permanent injunction, is the subject matter of challenge in this appeal.

The suit was dismissed on contest. The plaintiffs/appellants were not able to establish their right in respect of the suit property.

The original plaintiff, namely, Prafulla Chongdar, contended that one Asit Kumar Dey was the owner-cum-landlord suit premises in respect of which he was a monthly tenant. The said Asit Kumar Dey transferred the suit premises in favour of the

defendant/respondent to whom the plaintiff agreed to pay rent. The defendant/respondent declined to accept rent from the plaintiff. It was further contended that the defendant/respondent on February 20, 1996 illegally demolished the roof of the suit premises with an oblique motive to oust the plaintiff from the suit premises.

The defendant/respondent contested the suit by filing written statement denying the allegations made in the plaint. The defendant/respondent contended that she requested the plaintiff to clear up the arrears along with the current rent, but the plaintiff did not pay any rent or occupational charges. When the husband of the defendant went to the plaintiff for collecting rent, he found the roof of the suit premises in a dilapidated condition. At that time the plaintiff requested the husband of the defendant to repair the roof of the suit premises. In the month of September 1995, certain portion of the roof of the suit premises collapsed when the plaintiff surrendered the tenancy, but the arrears of rent remained to be let off.

Before the trial court, the fact of surrender of tenancy could not be proved by the plaintiff and in the first appellate court, the evidence to the aforesaid effect has remained unshaken.

In view of concurrent findings of fact arrived at by both the courts below with regard to the question of surrender of tenancy and non-payment of arrears of rent, we do not find any reason to interfere with such concurrent findings of fact. 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.)