

Item-4
sg

31-01-2022

SA 117 of 2021
CAN 1 of 2021

Ct. 8

Nemai Candra Das & Anr.
Versus
Baidyabishal Pal

(Through Video Conference)

Mr. Partha Pratim Roy, Adv.
...for the appellants

The appeal is arising out of affirmation of the judgment and decree of the learned Civil Judge (Junior Division), First Court at Kandi in Title Suit No. 129 of 2012 in a suit for declaration as well as permanent injunction and mandatory injunction.

We have heard the learned Counsel for the appellants in support of this appeal.

The suit is arising out of an allegation that the defendant has made certain unauthorized construction in the first floor of the 'kha' scheduled property and installed windows in the northern side of the 'kha' scheduled property situated on the ground floor without any permission from the plaintiff and in violation of the agreement between the parties that the defendant shall not install any window in the northern side of the 'kha' scheduled property. The evidence before the learned Trial Judge would unmistakably show that the plaintiff in his evidence has admitted that he had authorized the defendant to make certain constructions which may not strictly be in accordance with the Panchayat Rules and thereafter, the plaintiff has filed a suit alleging illegal conduct of the defendant.

The learned Trial Court assessed the report of the Survey Commissioner and held that the defendant has installed window on the northern portion of the plot No. 765, which thereby causing the family privacy of the house of the plaintiff endangered and the plaintiff may be at liberty to block the aforesaid window of the defendant by raising the wall in order to block the said window.

The learned Trial Court was of the view that the Survey Commissioner was not competent enough to submit report as to whether the family privacy of the family of the plaintiff would be endanger due to installation of the windows at plot no.768 that is in the northern side of the land of the defendant. Moreover, during cross-examination, it was revealed that the height of the window of the plot 765 is 3.5 feet and even there is a wall on the southern side of the plaintiff's house i.e. in the northern side of the house of the defendant in which the defendant is trying to install the window as per the version of the plaintiff.

The learned Trial Judge, on the basis of the evidence, arrived at a finding that the plaintiff failed to adduce any evidence to show that due to installation of the aforesaid window in the northern side of the house of the defendant, the privacy of the plaintiff would be at stake, apart from the fact that the plaintiff had permitted such construction to be raised which may be in contravention of the Panchayat Act.

The First Appellate Court while affirming the order of the learned Trial Judge had noted that the defendant did not approach the Panchayat to obtain sanction before making construction on his land in terms of Section 23(1) of the West Bengal Panchayat Act. The First Appellate Court on re-appreciation of the evidence, observed that the

defendant had encroached a portion vertically on the land of the plaintiff. The defendant had admitted the fact that he made ground floor and first floor constructions without taking permission from the Panchayat authority. The First Appellate Court was of the further opinion that no agreement by any person can validate the illegality under the law of the land. The defendant did not take any legal permission from the competent authority of the Gram Panchayat.

However, taking note of the fact that the Commissioner's report said that the defendant did not encroach any portion of the plaintiff's land, this Court may not be in a position to direct demolition of any construction, which appears to be illegal and the plaintiff may be directed to approach the competent authority under the West Bengal Panchayat Act for such demolition order. In the instant suit, the competent authority under the West Bengal Panchayat Act was not made party. But what is relevant is the conduct of the parties in relation to the suit property when a finding is arrived at that there is no encroachment on the plot of the plaintiff.

The question arises whether the defendant had made any construction in violation of the sanctioned plan. If the Panchayat authority would have been impleaded as party, this issue could have been decided in the suit itself. In absence of the Panchayat authority, in our view, both the Courts have rightly held that the plaintiff should have approached the Panchayat authority for demolition of the alleged unauthorized construction upon being established that such construction is illegal or that it has been raised in contravention of the West Bengal Panchayat Act. The issue whether such construction should be regularized would also be a relevant consideration in that

proceeding.

In view thereof, we do not find any reason to admit the second appeal. The appeal, being SA 117 of 2021 stands dismissed. The connected application, being CAN 1 of 2021 is accordingly, disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)