

20.12.2022
SL No.59
Court No.8
(gc)

SAT 47 of 2010
CAN 1 of 2010 (Old No: CAN 1008 of 2010)
CAN 2 of 2010 (Old No: CAN 9970 of 2010)
CAN 3 of 2010 (Old No: CAN 9975 of 2010)

Mira Pal & Ors.
Vs.
Sailesh Pal & Ors.

This matter appeared in the Warning List of 29th November, 2022 with a clear indication that this matter shall be transferred to the Regular Bench on 5th December, 2022. Since then the matter is appearing in the list. The appeal is of the year 2010. The appellants have due notice of the matter. The appellants are not represented.

We have perused the revised report of the Stamp Reporter dated 19th December, 2022. However, we propose to ignore the defects indicated in the revised report for the time being as we are of the view that in the event the second appeal is admitted, then we may pass consequential orders.

The appellate judgment and decree dated 11th November, 2009 confirming the judgment and decree of the Trial Court dated 30th September, 2002 in a suit for eviction is a subject matter of challenge in this second appeal. We have read the judgment of the Trial Court, First Appellate Court and also the grounds of appeal. The plaintiffs claimed to be the owners of the suit property. The defendant is a businessman and used to carry on clay

images business in or about 1997, during puja season, he approached the defendant to allow him to keep some articles like split bamboo, clay, etc. temporarily for the purpose of using the same for making images of Goddess Durga. The defendant has a separate place for manufacturing and trading of his creations on the Diamond Harbour Road. On the basis of such permission, the plaintiffs allowed the defendant to use A Schedule part of the land without any fee to store such materials temporarily with the terms that he would leave the place on expiry of the Puja season. The defendant, however, refused to vacate the land and on the contrary it was alleged that he put up polythene sheet over the A schedule land and he had also damaged the drainage system. In view thereof, the plaintiffs revoked the licence and demanded possession. Since the defendant failed and neglected to vacate the A schedule land, the suit was filed. The defendant contested the said proceeding. In the written statement, it was alleged that B Schedule passage is a subject matter of proceeding under Section 144(2) of the Cr.P.C.. The plaintiffs tried to fix a iron gate on the passage to obstruct the ingress and egress to the A schedule land where the clay models are being stored. The defendant has referred to various proceedings, he had initiated before different forum due to alleged obstruction being caused to his ingress and egress to the premises in question. The defendant has also claimed adverse possession. Once it is admitted that the induction of the

defendant to the suit premises is of a licensee and the ownership of the plaintiffs in the suit property being established, the defendant/appellant has hardly any case to support his claim for continued possession after the licence is removed. Moreover, the defendant could not establish that her possession in respect of the suit property was open, hostile and uninterrupted. In the various proceedings that he had filed before different forum would show that exercise of his right over and in respect of the said plot in spite of revocation of licence was never accepted by the plaintiffs.

In view of the concurrent findings of facts with regard to the factum of licence and failure to prove adverse possession, we do not find any reason to admit the second appeal.

Accordingly, the second appeal stands dismissed at the admission stage.

In view of dismissal of the second appeal at the admission stage, the connected applications also stand dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)