

13.12.2022  
SL No.22  
Court No.8  
(gc)

**SAT 55 of 2016**  
**CAN 1 of 2016 (Old No: CAN 1653 of 2016)**

**Sekh Mustakim & Ors.**  
**Vs.**  
**Sekh Munsur & Ors.**

Mr. Tapas Kr. Ghosh,  
Mr. Tanmoy Chowdhury,  
...for the Appellants.

The appellate order dated 21<sup>st</sup> January, 2016 affirming the order passed by the Trial Court on 16<sup>th</sup> March, 1996 in a suit for declaration of title and permanent injunction is the subject matter of the second appeal. The decree dated 16<sup>th</sup> March, 1996 was challenged before the Appellate Court in the year 2016. The First Appellate Court has recorded in the order that the certified copy of the judgment and decree was received by the appellants on 29.01.2010 and thereafter they did not take any steps to prefer any appeal. No reasonable explanation was offered for the petitioner. The Appellate Court has observed that the appeal was filed after 19 years. The certified copy of the judgment was not annexed to the memorandum of appeal. The land in question originally belonged to one Sk. Mohammad and Sk. Kajem Ali. They purchased the suit property in Rent Suit Execution Case No.447/35 in auction sale. Thereafter, they used to possess the suit property amicably. Previously the suit property belonged to Mihilal Sk., Ashda Bibi, Sabura Bibi, Hasema Bibi and Nurjan

Bibi. They could not pay the rent of the suit property and that is why one Mohammad Abdul Hafiz filed Rent Suit No.831/34 before the learned Munsif, 2<sup>nd</sup> Court claiming the arrear rent of the suit properties and the said suit was accordingly decreed in favour of Mohammad Hafiz. The suit property was auctioned in Rent Suit Execution Case No.447/35 and Sk. Mohammad along with Kajem Ali had purchased the suit property in auction sale. The dispute started at the time of revisional survey operation in respect of plot no.760 where according to the plaintiff the name of the nephew of Janhar Bibi, that is, Sk. Altaf was recorded as possessor. The share of Janhar to the extent of 29 decimal of land has been erroneously recorded as 26 decimal of land in the name of Kajem Ali. The principal defendants did not contest the suit. The only proforma defendants contested the suit by filing written statement. During trail, it transpires that the proforma defendants in C.S. Plot No.760 have not contested the suit and they have not challenged the tracing of title by the plaintiffs. The plaintiff no.3 examined as P.W.1. He has in detail narrated the acquisition of the properties by the plaintiffs. The narrative towards the acquisition was never challenged in the cross-examination. It appears from the Exhibit-3 that Sk. Mohammad and Sk. Kajem Ali got the suit property in auction sale in Rent Suit Execution Case No.447/35 as mentioned above. The plaintiffs have also proved payment of rents of the suit properties vide Exhibits 2 to 2(f). These documents clearly establish that

the predecessor-in-interest of the plaintiffs have duly acquired the suit property and they were in possession and they used the suit property upon payment of rents to the State of West Bengal. Exhibit-1 and 1(a), that is the R.S.R.O.R. shows that the plot no.760 measuring 2.09 has been recorded in the name of Altaf and plot no.760/866 has been recorded in the name of Kajem Ali. The Trial Court has scanned the evidence of P.W.1 and considered such evidence in the light of Exhibit-3 and thereafter arrived at a conclusion that R.S.R.O.R. has been erroneously prepared and not in accordance with the share of the plaintiffs and Sk.Altaf, the only heir of Janhar Bibi. The case of the plaintiffs was also proved by Exhibit-3 produced by the employee of Suri Sadar sub-registry office.

In view of the aforesaid, the learned Trial Court decreed the suit on 16<sup>th</sup> March, 1996 as observed by the First Appellate Court, the appeal was preferred almost after 19 years without any sufficient cause being shown for not being able to prefer the appeal with the aforesaid period of limitation. Undoubtedly, valuable right has been accrued in favour of the plaintiffs by virtue of long passage of time.

We do not find any substantial question of law involved in the second appeal for which the second appeal can be admitted.

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

In view of dismissal of the second appeal, the application also stands dismissed.

However, there shall be no order as to costs.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**