

20.12.2022
SL No.61
Court No.8
(gc)

SAT 91 of 2010

**Anita Chowdhury & Ors.
Vs.
Pulak Kumar Chowdhury & 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.

The department has reported that the defects pointed by the Additional Stamp Report in its report dated 17th March, 2010 have not yet been removed. We find from the record that the Coordinate Bench on 9th November, 2011 noticing such defects had directed the appellants to remove the defects within a period of two weeks and the matter was directed to be listed after two weeks. Since then the matter did not appear until the matter was listed in the Warning List of 29th November, 2022.

We could have dismissed the second appeal for non-removal of defects. However, we propose to consider whether the second appeal involves any substantial question of law. The appellate decree dated 25th November, 2009 affirming the judgment and decree of the Trial Court dated 9th September, 2008 in a suit for

declaration of right, title and interest and permanent injunction and for declaration that the proceeding No.14/Misc./04 (proceeding for correction of record) is wrong and illegal. The Trial Court dismissed the suit having noticed that plaintiffs had failed to show any documentary evidence that the several plots of land of Mouza Noapara were, in fact, belonging to them and subsequently those properties were recorded in the name of the defendant No.1 in lieu of transfer by way of exchange. These facts have not been established at the Trial Court and the Appellate Court having concurred with the view of the Trial Court upon taking into consideration such facts dismissed the appeal on contest. The Appellate Court has also noticed that the predecessor-in-interest of the parties, i.e. Gosai Das Choudhury who was the original owner of the suit property and other properties transferred the suit property by registered deed of gift in favour of the defendant No.1 Pulak Choudhury which is clear from Ext.A. on the other hand, the subject matter of deed of gift (Ext.B) was given to Padmabarna, the predecessor of the plaintiff/appellants. For reasons not disclosed by the plaintiff/appellants there is no averment in the plaint as to how the said deed of gift (Ext.B) the property convert thereunder was dealt with and disposed of. It is also not the plaintiffs' case that the defendant No.1 has been in possession of that property i.e. the property transferred under Ext.B. This clearly established that the plaintiffs

have failed to prove the case of exchange which was duly taken note of by the Trial Court. The Appellate Court has also rightly observed that the suit was filed to thwart the proceeding of the Review Authority initiated by the defendant No.1 seeking correction of the entry of the R.O.R based on Exhibit A and B.

The second appeal, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)