

14.
sg 09-03-2022

Ct. 8

SAT 92 of 2019
CAN 1 of 2019 (old CAN 5742 of 2019)
CAN 2 of 2019 (old CAN 5743 of 2019)
CAN 3 of 2019 (old CAN 5745 of 2019)
CAN 4 of 2021

Jachimuddin Laskar & Ors.
Versus
Nechar Laskar, since deceased,
represented by Saleya Laskar & Ors.

(Through Video Conference)

Mr. Sounak Bhattacharya, Adv.
Mr. Sounak Mondal, Adv.
...for the appellants

Mr. Amit Baran Dash, Adv.
...for the respondent nos. 1(a)-1(c),
1(g)-1(j), 1(l), 3,4,5 and 9(c)

The second appeal has come up for admission. We have heard Mr. Sounak Bhattacharya, learned Counsel appearing on behalf of the appellants.

Sworn of details, the plaintiffs had filed a suit for declaration and injunction. The claims of the plaintiffs briefly are; that the suit property as described in the scheduled of plaint previously belongs to the plaintiffs' predecessor, Enait Laskar. He died leaving behind his two sons and three daughters. All the aforesaid legal heirs inherited the property and had been possessing the said property jointly. While the parties were in joint possession, Chhamad Laskar died leaving behind his two wives, five sons and three daughters. They are the plaintiff nos. 2 to 11. They inherited the share of the property left by Chhamad Laskar and have been possessing the suit property. The plaintiffs

alleged that the defendants have no right, title, interest and possession in and over the suit property. The said defendants have threatened to dispossess the plaintiffs from the suit property on 23rd March, 1999. It was, at this stage, the suit was filed.

The defendants contested the suit by filing the written statement. In the written statement, it is alleged that the plaintiffs have no right to the said property as they were not in possession for over 12 years. The plaintiffs have not able to establish their title in the suit property. It was alleged that the father of the defendants took settlement of the suit property from one Nanda Kumar Mistiri in the year 1340 B.S. and had constructed 'gola ghar' and had been using the usufruct without any let or hindrance. The defendants have inherited the suit property and have been using the suit property continuously and uninterruptedly. It was alleged that since the predecessors of the defendants were threatened by the predecessors of the plaintiffs, a case was filed against the predecessors of the plaintiffs and others being Civil Rule no. 20229(w)/1965 and the Rule issued by the learned Single Judge was subsequently made absolutely.

On the basis of the oral and documentary evidence and primarily relying upon the judgment of the Hon'ble High Court in Civil Rule No. 20229(w)/1965, the suit was dismissed. An appeal was preferred against the said judgment and decree. The appeal was also dismissed after taking into consideration that the order the Hon'ble High Court in the earlier proceeding clearly established that the predecessors of the defendants have acquired the suit land from the superior landlord, Nanda Mistiri, in 1340 B.S. at the rental of Rs.2 yearly basis 'dhakhilas' and the property

was settled in their favour and it was also held that the entries in the RS khatian was wrong. The said order also protected the interest of the respondents. The Settlement Officer was also directed to open a new Khatian under CS khatian no. 216 and the Rule was made absolute on 8th April, 1975.

In view of such clear findings in the earlier proceeding, the learned Appellate Court has no other choice but to affirm the order passed by the learned Trial Court.

Mr. Sounak Bhattacharya, learned Counsel submits that the record of rights would show that the appellants are in possession and the order was passed on a total misconstruction of the judgment passed by a learned Single Judge in the earlier proceeding. An attempt was made to submit that the said judgment never existed.

However, we do not find that at any stage of trial, the appellants had ever raised any issue with regard to the existence of said judgment halving regard to Section 43 of the Indian Evidence Act, 1872. Unless the existence of such judgment is a fact in issue, there is no scope for the appellants at this stage to argue that the said judgment never existed. No issue was also framed by the learned Trial Court with regard to existence of the said judgment. The belated attempt to raise such issue, however, reflects in quagmire of despondence on the part of the appellants to frustrate an order.

The second appeal is dismissed with costs assessed at Rs.10,000/- to be paid by the appellant to the High Court Legal Services Committee. The said amount shall be utilized for the welfare of the street children.

Certified copy of the order of the learned Single Judge was tendered in evidence without any objection and marked as Exhibit-‘kha’ before the learned Trial Court.

In view dismissal of the appeal, CAN 3 of 2019 (old CAN 5745 of 2019) stands dismissed.

However, it is recorded that CAN 1 of 2019 (old CAN 5742 of 2019) and CAN 4 of 2021 were disposed of on 7th April, 2021 and CAN 2 of 2019 (old CAN 5743 of 2019) was disposed of on 11th February, 2021.

The department is directed to make proper endorsement with regard to the disposal of the appeal as well as of all the connected application and the same shall not be shown as pending.

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.)