

DL. March 1,
14. 2022

F.A. 53 of 2021

Sri Sanat Kumar Dey & ors.
Vs.
Sri Ajit Kumar Dutta & ors.

Mr. R. I. Sardar,
...for the appellants.

Mr. Anirban Bose,
Mr. Satyajit Senapati,
...for the respondent no. 5.

Re: CAN 1 of 2021 (injunction)
And
CAN 2 of 2021 (appropriate order)
- both filed on April 6, 2021.

Affidavit of service filed in court today is taken on record.

In spite of service, the respondents are not represented save and except the respondent no. 5.

By consent of the learned advocates appearing for the parties, we take up the appeal itself for hearing, although the same is appearing under the heading “application”, upon dispensation of all other formalities.

It appears that the defendants, after filing the written statement, did not take any initiative in the present suit to prove their claim. Accordingly, the defence urged by them that the suit is barred by the principle of res judicata is, accordingly, turned down by the learned trial judge.

However, in so far as the claim of the plaintiffs/appellants is concerned, it appears from the impugned judgement that the learned trial judge answered issues no. 3, 4 and 5 against the plaintiffs on the ground that the plaintiffs failed to prove the deed of

gift in accordance with law. The impugned judgment has not specified any lacuna in the evidence in support of such observation.

The learned advocates for the parties have, fairly, submitted before us that the trial court was not properly assisted to decide the suit and, as such, prayed for rehearing of the suit on such terms and conditions that the court may think fit and proper.

We are also of the opinion that the parties should properly assist the trial court in coming to a proper conclusion.

Under such circumstances, we set aside the impugned judgment and decree and direct retrial of the suit after opportunities being given to the parties by the learned trial judge to adduce their respective evidence.

We direct the trial court to pass peremptory directions with regard to procedural matters in order to enable the parties to file their respective affidavits of evidence. The trial court is further requested to conclude the trial as expeditiously as possible, preferably within a period of one year from the date of communication of this order without granting any unnecessary adjournment to either of the parties. The trial court shall deliver judgment afresh after conclusion of the trial, as aforesaid, without being influenced by any of the observations made by it in the impugned judgment.

The trial court is at liberty to proceed ex parte against the defendants or any of the defendants, in the event the direction of the trial court is not adhered to. The same principle will also apply in case of the plaintiffs.

It is recorded that the learned advocates appearing for the

parties have assured this court that they shall co-operate with the learned trial judge in early disposal of the suit.

With the aforesaid directions, the appeal and the connected applications are disposed of without, however, any order as to costs.

(Soumen Sen, J.)

dns

(Ajoy Kumar Mukherjee, J.)