

29.06.2022

Sl.No. 14
Ct.No.3
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

SA 103 of 2022

Smt. Rinku Jaiswal & Ors.
VS
Sri Sambhu Nath Tiwari & Ors.
With
IA NO: CAN/1/2022

Mr. Bijoy Adhikary
Mr. Debasish Kundu
Mr. Souma Subhra Ray
Ms. Sushmita Adhikary
Ms. Doyel Dey

...for the appellants

Mr. Souri Ghosal
Mr. Prabhat Kumar Singh

...for the respondents

Re: CAN/1/2022

We admit the appeal.

By the impugned judgment and decree dated 1st April, 2022 the appeal of the appellants/defendants was dismissed by the first appellate court on the ground of limitation. The trial court had held that the title and possession of the subject property belonged to the respondents.

Learned counsel for the appellants in this second appeal contends that the impugned judgment and decree of the trial court was obtained ex parte, inasmuch as, the original defendant at the time of service of the summons

was in an unconscious state, suffering from paralysis. He could not have any notice or knowledge of how and on whom the summons had been served. After his death, his legal heirs and representatives became aware of the decree only when the notice of execution was sought to be served upon them.

Being apprised of these facts, we do not want unnecessary time to be wasted in litigation, in an enquiry into any technicalities with regard to service of the summons or the reason for non-appearance of the appellants/defendants. By the impugned judgment and decree, the appellants/defendants have lost the title and possession of the property on purely technical grounds without the merits of the matter having been gone into by the courts. Any reasonable person would not want to lose title to or possession of a property by avoiding summons or by staying away from courts.

We are of the view that the entire suit should be heard out on contest. To protect the interest of the respondents the suit should be heard out within a limited period of time not exceeding one year from date.

The appellants should compensate them for the costs incurred in defending the appeal today,

being assessed at Rs. 10,000/- to be paid by the appellants to the respondents' advocate on record by 31st July, 2022.

We set aside the impugned judgment and decree dated 1st April, 2022 in Title Appeal No. 24 of 2022 of the first appellate court and the learned trial court dated 30th September, 2019 in TS No. 393/2019 and remand the entire suit to the trial court to be tried and decreed not later than 30th June, 2023.

The appeal (SA 103 of 2022) is, accordingly, disposed of.

The connected application (CAN 1 of 2022) praying for stay of execution is unnecessary, as the impugned judgment and decree has been set aside by the court. It is disposed of, accordingly.

(Subhendu Samanta,J.) (I. P. Mukerji,J.)