

SAT 175 of 2008
with
I.A No. CAN 1 of 2009 (Old CAN No. 9792 of 2009)

Smt. Sukumoni Uram & Anr.
Vs.
Sri Kopila Uram & Anr.

The appeal is of the year 2008.

The matter appeared initially on 16th February, 2010 before a coordinate bench when the matter was directed to go out of list with liberty to mention after removal of defects as pointed out by the stamp reporter on 7th July, 2009.

The Section Officer/Superintendent (S.R Section) in its report dated 13th December, 2022 has stated that the defects identified by the stamp reporter on 7th July, 2009 have not yet been removed. It clearly shows that the appellant is not interested to proceed with the appeal.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list.

Today the appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

In order to find out if any substantial question of law(s) is involved in this second appeal we have gone through the judgment of the trial court as well as the first appellate court and the grounds of appeal.

It appears from the order of the first appellate court that the appeal was preferred against final decree in T.S No. 3 of 2005, previously numbered

as T.S 177 of 1993, in a suit for partition. The suit was decreed ex parte. After the ex parte final decree was passed in terms of investigation report of the Commissioner it was found that after a lapse of 500 days the appeal was filed against the final decree.

The appellate court did not find any reason to interfere with the judgment and final decree passed by the trial court. In our view, the appellate court has rightly arrived at a finding that the said appeal was filed with the sole intention of delaying the proceeding. It was not the case of the plaintiff that they were not aware of the proceeding or any such decree was obtained was fraud.

On such consideration, we do not find any reason to interfere with the order passed by the first appellate court rejecting the application filed under Section 5 of the Limitation Act.

Having found no substantial question of law involved in this second appeal, the same is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage.

In view of dismissal of the appeal CAN 9792 of 2009 is also dismissed.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

