

06 29.9.2022

Ct-08

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SA 108 of 2022
with
I.A No. CAN 1 of 2004(Old CAN No. 4565 of 2004)
Bankim Behari Dhara since deceased
Gopal Chandra Dhara & Ors.
Vs.
Jagannath Dhara

The appeal was tendered in the year 2004. The record shows that no attempt was made by the appellants to move the second appeal. The appellants were also not represented on the earlier occasion on 27th September, 2022.

This matter appeared on 9th September, 2022 and since then it is appearing in the list. It seems that the appellants have due notice of the matter.

Today, the appellants are not represented, nor any accommodation is prayed on their behalf. We, however, propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmation dated April 27, 2004 passed by the learned Additional District Judge, 1st Track Court, Paschim Midnapore, in Title Appeal No. 124 of 1994 arising out of judgment and decree dated July 16, 1994 passed by the learned Civil Judge (Senior Division), 3rd Court, Paschim Midnapore, in Title Suit No. 26 of 1980 is the subject matter of challenge in this appeal.

We have carefully gone through judgment and decree of the trial court as well as the first appellate court. The suit was decreed ex parte. The record would show that the appellants adopting dilatory tactics delayed the hearing of the suit as well as the final decree proceeding.

The trial court on consideration of the objection raised by the appellants accepted the report filed by the Commissioner and passed the final decree. There has been no challenge to the Commissioner's report at the appellate stage. The appellants cannot substantiate their objection with regard to the report filed by the Commissioner. The Commissioner filed the report on 14th September, 1992 and it was accepted on 23rd December, 1992. We have perused the report filed by the Commissioner and it is a detailed report.

The appeal was preferred almost a year thereafter. The appellants preferred a revision, which was also rejected.

In view thereof, we do not find any merit in the second appeal. In fact, we find no substantial question of law involved in this appeal for which the same is required to be admitted.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the second appeal nothing remains to be decided in the application for injunction being CAN 4565 of 2004 and the same is also dismissed.

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)

