

21.02.2022
SL No.23
Court No.8
(gc)

SA 3 of 2021

Swapan Kumar Manna & Ors.

Vs.

Sisir Guin

(Via Video Conference)

The appellants are not represented nor any accommodation is prayed for on behalf of the appellants.

On the earlier occasion, the appellants were also not represented. We adjourned this matter on the last occasion with a specific observation that the matter shall be listed today, i.e. 21st February, 2022 as a last chance.

This second appeal is arising out of a judgment and decree dated 25th January, 2019 passed by the learned Additional District and Sessions Judge, 2nd Court, Arambagh, Hooghly in Title Appeal No.13 of 2017 whereby the Appellate Court had affirmed the judgment and decree dated 12th May, 2017 passed by the learned Civil Judge (Junior Division), 1st Court, Arambagh, Hooghly in Title Suit No.05 of 2012. The plaintiff/opposite party filed a suit for declaration of right, title and interest as well as the confirmation of possession and permanent injunction along with other consequential reliefs. Before the Trial Court, the plaintiff was able to establish his right, title and interest in respect of the suit property by production of the record of rights, namely, L.R.R.O.R., which was marked as

Exhibit No.1, and also Khajna Dakhila, which was marked as Exhibit No.2, wherefrom it appears that 6 satak property at Plot no.1891 had been recorded in the name of the plaintiff and it also mentioned that he is in possession of the same on the basis of patta.

The learned Trial Court also relied upon the report of the Commissioner which was exhibited and marked as Exhibit No.4 wherefrom the existence of the club over the suit property could not be found. It also transpired during evidence that D.W.1 in his cross-examination dated 26th February, 2016 deposed that “We have no document to show that Sisir Guin get the patta over the suit property on behalf of our club.” “We never paid any khajna for the suit property to the State of West Bengal.”

In absence of any document forthcoming on behalf the defendants either to establish possession and/or construction of any club building over the suit property or title and having regard to the fact that the plaintiff was able to establish his possession and title to the suit property on the basis of the evidence as mentioned above, the plaintiff having a better title to the property as opposed to no title by the appellants is entitled in law to get a declaration of right, title and interest as also confirmation of possession. [see Tarumoni vs. Prafulla : 06(3) CHN 1]

Both the Courts, in our view, have rightly rejected the contention on behalf of the appellants that the patta was

handed over to the plaintiff/respondent on behalf of the club. The appellants have failed to establish this case at the trial either by documentary or by oral evidence. Once the documents read with oral evidence clearly suggest and establish the right, title and interest of the plaintiff, in the suit property, in our view, the plaintiff is entitled to the decree as claimed.

In view of the fact that no substantial question of law is involved for which the second appeal can be admitted.

Under such circumstances, the second appeal being SA 3 of 2021 stands dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)