

SA 78 of 2021

Ct-08

**Sri Sisir Kumar Das
Vs.
Smt. Suvodhra Dey & Ors.**

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This second appeal has come up for admission. The decree of affirmation of the judgment and decree dated 23rd June, 1999 passed by the learned Civil Judge (Junior Division), 2nd Court, Bolpur, is the subject matter of challenge. The appellate Court's order is passed on 9th February, 2005 in Title Appeal no. 26 of 1999.

The appeal was presented on 17th May, 2005. Thereafter no step was taken for admission of the said appeal.

The appeal initially appeared in the list on 25th July, 2022 and since then the matter is appearing in the list. The appellant is not represented. It gives clear indication that the appellant is not interested to proceed with the appeal. Be that as it may, in view of the order dated 8th September, 2022 of which the appellant is deemed to have noticed, we proceed to decide whether the appeal is required to be admitted or not. The second appeal can be admitted only on the substantial question of law.

In the instant case, the plaintiff has filed for a suit for declaration and injunction. The plaintiff and the proforma defendant no. 7 are the cousin brothers and both of them inherited as well as acquired property by way of gift from their uncle Radhashyam Bahara and his aunt Shandhya Bala Dasi. The plaintiff alleged that one Sisir Kumar Das at some point of time disclosed that he had right and interest in the property, but he

could

not produce any minimum document. Thereafter, Sisir produced a deed alleged to have been executed in his favour in respect of the suit property. The plaintiff challenged the said deed and claimed that the defendant and his father were the Bargadar under the plaintiff and the proforma defendant no. 7 used to cultivate the said property as Bargadar and such right had never crystalised into a ownership. The defendant on the other hand alleged that the plaintiff gave a proposal for the sale of Bargadar and the defendant/appellant agreed to purchase the same. On the basis of such agreement, the plaintiff transferred the suit property to the present appellant upon payment of consideration money. The said deed was executed on 20.6.1992 and was registered on 3rd July, 1992.

Before the Trial Court it transpires that the defendant could not produce the original deed alleged to have been executed by the plaintiff in favour of the defendant. The defendant no. 1 alleged that the original deed has been eaten up by the white ant but he did not disclose the same in his written statement. The plaintiff could not explain the delay in execution of the said deed in favour of the defendant. D.W 4 stated that the entire consideration money has never been paid by the defendant no. 1 to the plaintiff in respect of the said document. The claim of the defendant could not be established at the trial. On the contrary, the plaintiff was able to establish through Exhibit 1/Ka and 2/Kha, which are essentially the certified copies of the order sheet of B.C Case nos. 126/94 and 46/96 as Exhibits 1 and 1/1 that the properties, even

after alleged execution of the deed, have been

claimed by the plaintiff and the proforma defendant no. 7 as owners thereof. On the basis of such evidence, the Trial Court returned a finding in favour of the plaintiff. This decree was unsuccessfully challenged in the appeal. The appellate court relied on the self-same evidence and also relied upon the evidence of the employee of B.L & L.R.O, who produced the B.C case (Bhagchasi case) in affirming the finding arrived at by the learned Trial Judge. The defendant was unable to establish that any title had passed in favour of the said defendant, present appellant, we do not find any substantial question of law involved in this second appeal.

On the basis of the aforesaid evidence both oral and documentary, it is possible to arrive at a finding in favour of the plaintiff.

The findings of both the Courts below on the basis of available oral and documentary evidence are not perverse.

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

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)

