

08.09.2022
SL No.28
Court No.8
(gc)

SA 79 of 2021

**Satyabrata Mitra & Anr.
Vs.
Sasanka Sekhar Mitra**

The second appeal appeared in the daily list on 25th July, 2022 and no interest was shown by the appellants to move the second appeal.

The appellants are also not represented today nor any accommodation is prayed for on behalf of the appellants. Although, the appellants have sufficient knowledge and notice of the listing of this matter.

The second appeal was presented on 5th August, 2010 but thereafter no attempt was made to move the second appeal for admission.

The second appeal is arising out of an appellate decree dated 17th February, 2005 passed by the Fast Track Court in T.A. No.223 of 2002 affirming the judgment and decree dated 26th April, 2002 passed by the learned Civil Judge (Junior Division), Alipore in T.S. No.168 of 1997. The plaintiff filed a suit for recovery of possession. Although it was mentioned as a suit under Section 6 of the Specific Relief Act but in effect is a title suit where the issue of title came up for consideration while deciding the claim of the plaintiff for recovery of khas possession. It appears from the judgment of the Trial Court as well as the First Appellate Court that the

suit property was originally belonged to Smt. Bidyut Mitra, that is the mother of the present appellants and wife of the respondent. Due to wayward behaviour of the appellants, the mother of the appellants, Smt. Mitra executed a deed of trust and settled the property in favour of the plaintiff on 31st December, 1996 and thereafter she has executed a Will dated 7th January, 1997 in respect of the suit property in favour of her elder son. The appellants contended that the plaintiff is not the absolute owner of the property claimed joint possession. In course of evidence, it transpired that the trust deed read with the Will shows that the intention of their mother is to confer absolute title on his eldest son. The execution of the deed of trust is not in dispute. It was by reason of such deed of trust, the plaintiff claims trustee over the suit property. The appellants could not dislodge the claim of the plaintiff with regard to the deed of trust excepting a bare denial. The plaintiff contended that on 28th December, 1996, the appellants forcibly entered to the house and dispossessed the plaintiff from the room of the suit premises which was under the direct possession of the plaintiff. P.W.1 in his evidence further stated that while he was dispossessed by the appellant No.1, he lodged a police complaint and filed a complaint case before the Judicial Magistrate. The deed of trust was proved in accordance with law. The deed of trust would show that the plaintiff was in possession of the suit property after the death of the wife. The proof of possession having been established both before the Trial

Court as well as before the Appellate Court, the plaintiff is entitled to recover khas possession of the room from which he was dispossessed.

The concurrent findings of facts by the Trial Court as well as the First Appellate Court with regard to the possession of the plaintiff in respect of the suit property from which he was dispossessed does not appear to be perverse or based on no evidence. There is no substantial question of law is involved in this second appeal.

Accordingly, the second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)