

30.06.2022
SL No.6
Court No.8
(gc)

FA 291 of 2007
With
CAN 2 of 2007
(Old No: CAN 9038 of 2007)
With
CAN 3 of 2007
(Old No: CAN 9569 of 2007)
With
CAN 4 of 2008
(Old No: CAN 10455 of 2008)
With
CAN 5 of 2008
(Old No: CAN 10479 of 2008)

Sibu Kar @ Shib Nath Kar & Ors.
Vs.
Gouri Bala Ghosh & Ors.

(Through Video Conference)

The appeal initially appeared in the warning list on 15th June, 2022 and thereafter transferred to the daily list on 22nd June, 2022. The appellants had been served with notice that the appeal and the connected application be taken up for consideration on 22nd June, 2022. The appellants in spite of notice had failed to appear. The appeal is pending since 2007. No attempt has been made by the appellants for early disposal of the appeal.

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

Under such circumstances, we propose to dispose of the appeal on the basis of the L.C.R. and available records. Paper book has already been filed.

The plaintiff has filed a suit for declaration, permanent injunction, damages, etc. The plaintiff claimed

that she purchased part of the Basti situated at 52/1, Durga Charan Doctor Road, which consisted of 13 huts, drain, pucca privy etc. from Jatindranath Patra and Haripada Patra. The Patras purchased the same from Smt. Kulshom Bibi. The plaintiff since purchase took over possession of the same and started living therein along with their family and also started realizing rents from the tenants existing therein. It is alleged that at the north-east corner of the said Basti, there was and still is a privy which since time immemorial was and is used to be enjoyed by the plaintiff and the members of the family of the plaintiff and also by the tenants including their families on one hand and by one Subhasini Maity who happened to be the owner in respect of the structure of adjacent Basti.

The position of the said privy is the subject matter of dispute. The plaintiff alleged that after the promulgation of the Calcutta Thika Tenancy Acquisition and Regulation Act, 1981, the lands under Thika tenancy and Basti of Calcutta have devolved upon the State of West Bengal and the plaintiff has become a direct tenant under the State of West Bengal and started depositing rent before the Thika Tenancy Controller, Calcutta. The dispute started with regard to the use of the said privy. The defendants alleged that the said privy is exclusively belonged to the defendants and the record would show that it was never belonged to the original owner or of the plaintiff. After framing of issues and consideration of oral and documentary

evidence, the learned Trial Court arrived at a finding that on the basis of the documents produced by the plaintiff it can be conclusively held that the plaintiff has got every right to use and enjoy the privy situated at the 'B' Schedule property and to enjoy the land adjoining thereto surrounding the said privy and right to make egress and ingress running from 'A' Schedule property to 'B' Schedule property and entitled to other consequential relief. The order passed by the learned Trial Court is under challenge.

The dispute between the plaintiff and the defendants regarding the existence of the privy was deliberately affirmed by the learned Trial Court. The allegation of the plaintiff was that the defendants have encroached upon the privy. The exclusivity of the right of the plaintiff to use the privy as their own was established from the title deed belonged to Gouribala Ghosh. In the deed executed between Jitendra Nath Patra and Gouribala Ghosh, the existence of privy was mentioned. Apart from the oral evidence, this document would conclusively show that the claim over the suit property as privy has been established. On the contrary, the defendants were unable to produce any document showing existence of any right on such privy as their own. In the instant case, the plaintiff was able to prove her title over the said privy. In the sale deed it was categorically mentioned that there was a privy.

On such consideration, we do not find any reason to interfere with the decree passed by the learned Trial Court. The decree is affirmed.

Accordingly, the appeal and the connected applications stand dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)