

Item-16. 16-12-2022

sg

Ct. 8

SAT 234 of 2008

Sk. Hasibul Alam
Versus
Saida Khatoon & Ors.

The matter appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The appellant is not represented nor any accommodation is prayed for on behalf of the appellants. The appeal is of the year 2008.

The appellate decree dated 7th February, 2008 affirming the judgment and decree dated 8th August, 2003 in a suit for declaration and permanent injunction is the subject matter of challenge in this second appeal.

Briefly stated; the plaintiff used to work as assistant mason at the time of construction the house of one Panna Lal Bhattacharjee, since deceased. Saida Khatoon also worked as co-worker and in course of their job, she proposed the plaintiff for marriage, which the plaintiff refused in the year 1993. Khatoon filed a Misc. Case under Section 125 of Cr.P.C. in the year 1996 claiming maintenance allowance for herself and one male child, who was born on 27th March, 1996. The plaintiff claimed that since there was no marriage, the aforesaid proceeding is not maintainable. He filed a suit for declaration claiming that no marriage had taken place between the plaintiff and the defendant

no.1. The defendant no.1 contested the proceeding.

The learned Trial Court as well as the learned First Appellate Court have relied upon the birth certificate of the child and statements of the witnesses corroborating the marriage between the parties. The evidences of the persons who have special knowledge about such relationship and were also seen the parties living together as husband and wife were examined and their evidences are relevant under Section 32(5) read with Section 50 of the Indian Evidence Act for the purpose of deciding the issue.

The Trial Court relying upon such oral and documentary evidences has dismissed the suit. The First Appellate Court on the same set of facts and documents arrived at the same finding.

The findings of facts arrived at by both the courts on the basis of the oral and documentary evidences do not appear to be perverse.

The second appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)