

18 06.12.2022

Ct-08

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SAT 203 of 2016
with
I.A No. CAN 1 of 2016(Old No. CAN 7662 of 2016)

Golam Hossain Sardar
Vs.
Md. Nizamuddin & Anr.

The appeal is of the year 2016. The stamp reporter has reported in his report dated 20.05.2016 that the appeal is defective. The appeal appeared in the warning list on 16th November, 2022 and continued to remain in the said warning list till it was transferred to regular list on 21.11.2022. In spite of notice, the appellant is not represented nor any accommodation is prayed for on behalf of the appellant. The appellant has also not taken any step to remove the defects.

The appellate judgment and decree dated 30th March, 2016 passed by learned Additional District Judge, 1st Court, Howrah, in Title Appeal No. 57 of 2013 affirming the judgment and decree dated 28th March, 2013 passed by learned Civil Judge (Junior Division), 2nd Court, Howrah, in Title Suit No. 189 of 2008 filed by the present appellant is the subject matter of challenge in this second appeal.

The suit was dismissed on contest against the defendant with cost. The counter claim was, however, decreed against the plaintiff on contest without any cost.

The plaintiff was directed to vacate the suit property and to hand over the peaceful possession over the same to the defendant within 90 days from the date of the judgment passed by the trial court.

The plaintiff filed a suit for declaration and permanent injunction. The plaintiff claims that the plaintiff is the co-owner and occupier of the 'A' schedule suit property. The plaintiff is in occupation of two rooms along with attached varandah being the 'B' schedule suit property, which is a part and parcel of the 'A' schedule suit property. The plaintiff further claims that he has right, title, interest and possession over the suit property and the defendant being an outsider has no manner of right, title, interest and possession over the same. On that ground the plaintiff dispossessed the defendant from the 'B' schedule suit property. The defendant made counter claim praying for eviction of the plaintiff from the 'B' schedule suit property, on the ground that the plaintiff was a licensee and such licence was revoked.

The defendant further claimed that the defendant along with his wife is the absolute owner of the suit property by way of demarcation in respect of one pucca dilapidated room measuring about 12 square feet 12 square feet along one R.T Shed by brick building wall in total 612 square feet covering with 13 chittak 8 square feet bastu land including passage and all easement appurtenant thereto situated at holding no. 16, Danesh Mollah Lane, by way of purchase with valuable consideration of Rs.2,20,000/- vide a registered deed of sale dated 24.03.2005. Thereafter, the defendant along with his wife mutated their names before Howrah Municipal Corporation and Settlement Office and after completion of mutation the purchased property under the holding no. 16, Danesh Mollah Lane has been renumbered as

16/1, Danesh Mollah Lane. The defendant along with his wife have been paying government rent and taxes before the concerned authority. The defendant has already applied for having electricity in the suit premises from CESC Ltd. as the defendant along with his wife are in absolute possession and enjoyment of the property peacefully, uninterruptedly and without any objection from any corner.

Both the parties have relied upon oral and documentary evidence. The trial court relied upon Exhibit-A i.e. sale deed wherefrom it appears that the name of the plaintiff has not appeared as the co-owner of the 'A' schedule suit property. The plaintiff has not challenged the registered deed of conveyance executed in favour of the defendant and his wife by Sk. Aslam Hoosain.

The defendant in order to prove that the plaintiff is a licensee has produced document, which is marked as Exhibit-J, namely, the original agreement dated 04.6.1993, wherefrom it appears that one agreement was executed by and between the plaintiff and the earlier owner of the property, namely, Sk. Aslam Hossain on 01.6.1993 wherein it is evidenced that the earlier owner of the 'B' schedule suit property, namely, Sk. Aslam Hossain took Rs.5,000/- from the plaintiff and permitted to stay or occupy the 'B' schedule suit property till repayment of said money. On perusal of exhibit-J it also appears that said Sk. Aslam Hossain had already paid Rs.5,000/- and the plaintiff also agreed to vacate the property on 14.8.1993. This exhibit clearly established that the plaintiff was occupier in the suit property under the permission of the earlier

owner and resided there till 14.8.1993, when the loan was repaid.

The Exhibit-A, namely, the certified copy of deed of conveyance, being no. 1252 for the year 2005 along with plaint, would show that Sk. Aslam Hossain had 613 square feet land consisting one dilapidated pucca room measuring about 12' by 12' and a room with R.T shed in the suit holding. On consideration of the exhibit-A and J it appears that in respect of which property Sk. Aslam Hossain took money from the plaintiff by permitting him to stay thereon till repayment, the deed of conveyance being the exhibit-A has been executed in respect of the same property. This property was supposed to be vacated by the plaintiff in terms of exhibit-J dated 14.8.1993 and it was sold to the defendant by Aslam vide exhibit-A.

Since the possession of the plaintiff was permissible under the erstwhile owner, he cannot claim a better title in the said property. The first appellate court concurred the findings of the trial court. The concurrent findings of facts are based on cogent and proper appreciation of evidence.

On such consideration, the appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage along with CAN 7662 of 2016.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

