

02.03.2022
SL No.15
Court No.8
(gc)

**SAT 144 of 2013
With
CAN 1 of 2018
(Old No: CAN 8440 of 2018)**

**Sandhya Kundu & Anr.
Vs.
Ashis Ghatak & Ors.**

(Via Video Conference)

Mr. Nilendra Narayan Roy,
....for the Appellants.

The second appeal is directed against the judgment and decree dated 6th December, 2012 affirming the judgment and decree 8th December, 2020 passed in T.S. 20 of 2006 by the learned Civil Judge (Junior Division), 2nd Court, Bankura.

We have carefully gone through both the judgments and heard the learned Counsel for the appellant. The learned Counsel for the appellant submits that under the Panchayat Act, some portion of the property is kept to be vacant for pathway and this fact was ignored by both the Courts. We do not find any argument to that effect either before the Trial Court or before the Appellate Court. A point not urged before the Trial Court or before the Appellate Court cannot be raised at this stage. The appellant cannot make out a new case at the admission stage of the second appeal. If both the Courts have come to a definite finding that the defendants were unable to

produce any document to show that the claim over a particular strip of land which is claimed to be the pathway, was either mentioned in deed of purchase or there was any evidence like settlement map to show that the said path was ever used by the villagers or commoners as a village pathway. The registered deed disclosed by defendants also does not mention right of passage to the suit plot No.564.

In the evidence, the appellants have admitted that the predecessor of the plaintiff was the owner of the suit property and, accordingly, the case of the defendants that the defendants acquired right, title and interest in respect of the said alleged pathway by adverse possession has got no leg to stand. The findings by both the Courts below were arrived at on careful scrutiny of the pleadings and on appreciation of the evidence. The concurrent findings of fact of both the Courts that the said pathway was never used as a village pathway and was never mentioned in the deed cannot be said to be perverse. Moreover, the defendants have admitted during their cross-examination that they have no document or paper to show that the strip of land was used by them ever or by any of the villagers or that it was treated as a village pathway.

We are of the opinion that no substantial question of law is involved for which the second appeal can be admitted.

Accordingly, the second appeal being SAT 144 of 2013 and the application being CAN 1 of 2018 (Old No: CAN 8440 of 2018) stand dismissed.

However, there shall be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)