

SA 83 of 2021

Ct-08

**Sudhir Chandra Biswas & Ors.
Vs.
Sri Haripada Roy**

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The appeal was adjourned on the earlier occasion on the prayer of the appellants.

The appeal was presented in the year 2005. Thereafter, it was registered as SA 83 2021.

Today, the appellants are not represented, nor any accommodation is prayed on his behalf. We, however, propose to decide the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmation dated March 29, 2005 passed by the learned District Judge, Malda, in O.C Appeal No. 57 of 2003 arising out of judgment and decree dated September 23, 2003 passed by the learned Civil Judge (Junior Division), 2nd Court, Malda, in O.C Suit No. 283 of 1995 is the subject matter of challenge in this appeal.

The plaintiffs filed O.C Suit no. 283 of 1995 against the defendant before the learned Civil Judge, Malda, praying for declaration that the ex parte decree dated 05.11.1992 passed in O.C Suit no. 248 of 1985 is void, forced and collusive and the same is not binding upon them. After contesting hearing the O.C Suit no. 283 of 1995 was dismissed.

In the plaint it is claimed that during the pendency of the earlier suit a settlement was arrived at sometime in the first part of July, 1989 where it was decided between the parties at the intervention of the gentlemen of the locality that the defendant would withdraw the suit as the present

appellants/plaintiffs would be accepted as owners and possessors of the suit property. It was first disputed by the defendant by filing written statement denying all the material allegations made by the plaintiffs in their plaint. The main contention of the defendant was that it was never decided between himself and the plaintiffs/appellants to withdraw the suit. The defendant contended that the plaintiffs did not contest the O.C Suit no. 248 of 1985 on their sweetwill as the plaintiffs never acquired any right, title and interest in the suit property. The case of the plaintiffs is based on Salish (settlement) in their village. The plaintiffs, however, not specifically stated when such Salish had taken place and could not adduce any evidence to show that any agreement was arrived between the parties with regard to the withdrawal of the suit and recognise the ownership of the plaintiffs in the disputed property. The oral agreement could not be proved by the plaintiffs. These plaintiffs were the appellants were the parties to the suit. No communication was made to the trial court in connection with O.C Suit no. 248 of 1985 that the suit is required to dispose of in view of the settlement.

In absence of establishing that any settlement was arrived at by and between the parties and that was suppressed when the decree was obtained, the findings of the trial court and the first appellate court based on such evidence both oral and documentary cannot be interfered with in the second appeal.

In view thereof, we do not find any merit in the second appeal. In fact, we find no substantial question of law involved in this appeal for which

the same is required to be admitted.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Uday Kumar ,J.)

(Soumen Sen, J.)