

DL. September
32. 22, 2022

S.A. 84 of 2021

Amulya Chandra Das

Vs.

Manjula Das Chowdhury

The present appeal is of the year 2005, but no attempt was made to move the same for admission after presentation. The appeal was kept pending for almost seventeen years before we directed this matter to be listed on September 9, 2022. Since then the matter is appearing in the list. In spite of sufficient notice, the appellant is not represented, nor any accommodation is prayed for. However, we propose to consider the question of admission of the present second appeal on the basis of the materials available on record.

The judgment and decree of affirmance dated February 24, 2005 passed by the learned Civil Judge (Senior Division), Sixth Court at Alipore, South 24-Parganas, in Title Appeal No. 271 of 2002 arising out of judgment and decree dated June 24, 2002 passed by the learned Civil Judge (Junior Division), First Court at Alipore, in Title Suit No. 383 of 1991, which is a suit for declaration and permanent injunction, is the subject matter of challenge in this appeal.

The learned trial judge decreed the suit on contest by declaring that the plaintiff/respondent is the absolute owner of the B-scheduled property and the joint user along with the defendant/appellant in respect of the underground reservoir

mentioned in C-scheduled property and also in respect of the stair case. For proper and better enjoyment of the suit property, the learned trial judge also passed a decree for mandatory injunction in favour of the plaintiff/respondent.

The learned trial judge, in his judgment, narrated the fact of the case, which reveals that the original allottee in respect of the A-scheduled property amicably partitioned the said property amongst the plaintiff and the defendant to the effect that the defendant/appellant would construct a building over the A-scheduled property and the plaintiff/respondent would construct building over the B-scheduled property and C-scheduled property would remain as common. This agreement was proved by the plaintiff/respondent by producing exhibit-3, being the inspection report, apart from adducing other oral and documentary evidence. The first appellate court affirmed the said decree of the trial court.

We do not find any reason to interfere with the concurrent findings of fact arrived at by both the courts below. We do not find any 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.

(Soumen Sen, J.)

dns

(Uday Kumar, J.)

