

**Dulon Mohanta  
Vs.  
Ram Chandra Dey & Anr.**

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The appeal was adjourned on the earlier occasion on the prayer of the learned counsel for the appellant.

The appeal was presented in the year 2012. Thereafter, it was registered as SA 46 2022.

Today, the appellant is 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 February 16, 2012 passed by the learned Additional District Judge, 2<sup>nd</sup> Court at Krishnagar, Nadia in Title Appeal No. 173 of 2006 arising out of judgment and decree dated August 19, 2006 passed by the learned Civil Judge (Junior Division), Additional Court Krishnagar, Nadia, in Title Suit No. 14 of 2005 is the subject matter of challenge in this appeal.

The plaintiffs claimed that they are businessman of Bethuadahari and are members of Bethuadahari Buddhar Hat Babosayee Samiti. The defendant nos. 1 to 5 are the owners of the suit property on which the Buddhar Hat operates. The Hat is situated by the side of the N.H 34 and the only Hat in the locality.

The plaintiffs alleged that the respondents tried to oust the plaintiffs from the property and they were not keen to develop the suit property. On the appreciation that they may be evicted from the suit property the suit was filed. The defendants

contested the said suit denying all the material allegation. The defendants relied upon C.S record of right being plot no. 215 recorded under Khatian no. 273 measuring an area of 2.36 acres of land. Reliance was also placed on R.S.R.O.R. Prior to R.S record the predecessor-in-interest of the defendants got the land from the previous owner. The aforesaid plot was denied by any Bata plots prior to R.S. record.

The defendants contended that in R.S.R.O.R some portion, i.e. 1.65 acres of land was recorded in the name of Bholanath Dey and others under Khatian no. 273 and Plot no. 215. The said persons are in possession on the basis of their respective shares. The rest 0.71 acres of land was recorded as Bata plot and the defendants have furnished the particulars of such Bata plot.

The case of the defendants was that the suit property was not the land where Hat used to take place. It is a 'bagan' i.e. "orchard, viti and bari" by character for a considerable long period of time. They denied that the above mentioned property was ever possessed by any businessman of the locality.

On examination of the oral and documentary evidence, the Trial Judge arrived at a finding that the suit property is a Bagan and viti by nature and it is given in lease every year by the owners and in some parts the owners possess it by constructing residential house. The suit property was never used as Budhbarer(Wednesday) Hat. There is no such licence from any authority either from the Collectorate Nadia or from the Panchayat for the said Hat. The property in suit is R.S.R.O.R Plot no. 215 corresponding to L.R.R.O.R Plot no. 479 totalling to 1.65 acres. The defendants admittedly the owners of the suit property. There was no

evidence to show that Budhbarer Hat used to sit on plot no. 215. Plot no. 215 is a 'bagan'.

The trial court arrived at the aforesaid finding based on Exhibit-1, Exhibit-B, Exhibit-C and Exhibit-E, which are all documents showing the character of the land and the persons in whose name such land was recorded.

The aforesaid evidence clearly established that the plaintiffs did not have right, title and interest over the suit property. The first appellate court on appreciation of evidence has agreed with the finding raised by the learned Trial Judge. The first appellate court also taken note of the fact that the plaintiff has specifically contended that Hat is situated on the R.S Plot no. 215 corresponding to Plot no. 479 but the documents having been relied upon being Exhibit-1 does not substantiate their claim. On the contrary, the Exhibit-D shows that the Hat usually sits on every Wednesday of the week over the Plot no. 255, which is not the suit property. The concurrent findings of fact arrived at on appreciation of evidence does not call for any interference.

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.)**

