

06.12.2022
SL No.23
Court No.8
(gc)

SAT 244 of 2016

Ajit Kumar Malik & Anr.
Vs.
Gobinda Malik

This matter appeared in the warning list on 16th November, 2022 with a clear indication that the appeal shall be transferred to the daily list on 21st November, 2022.

The appellants are not represented nor any accommodation is prayed for on behalf of the appellants, although, the appellants have sufficient knowledge and notice of the listing of this matter. This appeal was filed in the year 2016 but since then no attempt has been made to move this appeal. The Additional Stamp Reporter has in his report dated 18.06.2016 indicated few defects. No attempt has been made to remove the defects.

The appellate decree dated 15.03.2016 affirming the judgment and decree dated 20.03.2013 passed by the learned Trial Court is a subject matter of challenge in this second appeal. The plaintiffs filed a suit for declaration and injunction in respect of item no.1 of Schedule A of the plaint and item no.2 of the said schedule which are large tanks and situated adjacent to each other. The plaintiffs claimed to have acquired indefeasible right of easement by way over the passage leading to the said two tanks which, according to the plaintiffs are being obstructed by the

defendant. The plaintiffs alleged that the defendant raised a wall on the passage in order to obstruct the plaintiffs to have a clear access to the said two tanks. The defendant is the owner of plot Nos.940 and 941 which comprises of two parts of the passage described in Schedule C to the plaint. The defendant filed the written statement in which it was claimed that the plaintiffs have an alternative route to the Ghat through Panchayat road and there was no requirement to use the Kancha Ghat of Sanyasee Pukur described in item No.1 of the Schedule "A". Similar plea was taken in respect of other property. The Trial Court dismissed the suit on the ground of defect of parties as well as failure on the part of the plaintiffs to prove any such obstruction. The suit was filed before the completion of the statutory period of 20 years which was the requirement of acquisition of easement. The First Appellate Court in affirming the order has relied upon the report filed by the Commissioner has recorded the version of the local people as regards the construction of fence and the user of the passage to reach the said two ponds by the plaintiffs and their family members as well as local residents. There was no evidence that the said passage was being used for time immemorial by the family of the plaintiffs and local residents.

The concurrent finding of facts based on cogent evidence is not called for any interference at the admission stage.

Accordingly, the second appeal stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)