

DL. September
37. 8, 2022

S.A. 97 of 2022

**Sri Ajit Mondal & ors.
Vs.
Subhadra Bala Dasi & ors.**

None appears on behalf of the appellants nor any accommodation is prayed on their behalf. The present appeal was presented on August 20, 2018 without any effort or desire to move the appeal for admission. The matter was appearing in the list since July 25, 2022. The appellants have sufficient notice and knowledge of listing of this matter. However, we propose to decide the question of admission of the second appeal on the basis of the materials available on record.

The present appeal has arisen out of a judgment and decree of affirmance dated May 29, 1998 passed by the learned Additional District Judge, Fourth Court at Krishnagar, Nadia, in Title Appeal No. 115 of 1995 arising out of judgment and decree dated June 26, 1995 passed by the learned Munsif, Third Court at Krishnagar, Nadia, in Title Suit No. 80 of 1994, which is a suit for declaration of title and permanent injunction.

The plaintiffs are the appellants herein. In view of the decree passed in an earlier suit by and between the parties, being Title Suit No. 13 of 1971 declaring the transaction to be a loan in substance, the present suit must fail as the same is barred by the principle of res judicata. The plaintiffs have conveniently suppressed the said fact in the present suit. As such, the learned trial judge dismissed the present suit. The findings of the learned trial

judge was affirmed by the first appellate court.

The concurrent findings of fact arrived at by both the courts below cannot be said to be perverse and does not call for any interference in the second appeal. Moreover, 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.)

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(Uday Kumar, J.)