

Item-46. 20-12-2022

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Ct. 8

SAT 274 of 2009
CAN 1 of 2013 (old CAN 783 of 2013)
CAN 2 of 2019 (old CAN 11953 of 2019)
CAN 3 of 2019 (old CAN 11961 of 2019)

Gayatri Sardar
Versus
Samar Sardar & Ors.

The matter appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The appellant is not represented nor any accommodation is prayed for on behalf of the appellants. The appeal is of the year 2009.

It appears from record that on 20th January, 2022, on the prayer of the learned Counsel for the appellant, the matter was directed to go out of list.

It appears that the defect as notified on 12th January, 2011 was attempted to be removed by filing two applications. CAN 11961 of 2019 is an application filed by the appellant/plaintiff for granting a leave to continue the second appeal against the legal heirs of the deceased respondent no.3 mentioned in paragraph 5. The appellant has also filed an application for substitution on the death of the respondent no.3 being CAN 11953 of 2019. But no attempt was made so far to move these applications.

The second appeal is arising out of a judgment and decree of

the First Appellate Court dated 9th February, 2009 affirming the decree dated 28th February, 2003 in a suit for declaration of the plaintiff's title and for recover of khas possession is the subject matter of challenge in this second appeal. Both the courts, on the basis of the pleadings and evidence on record, had arrived at a finding that the plaintiff has failed to establish that the defendant is a licensee.

The Trial Court as well as the First Appellate Court has taken into consideration the oral and documentary evidence which would show that the suit property belonged to one Jitendra Nath Sardar and Surendra Nath Sarkar. PW-1 has admitted that suit plot belonged to Jiten and Suren. Surendra Nath Sardar gifted 08 decimals land from western portion of the suit plot to Gouri Bala Sen by a deed of gift. The Exhibits D and D(1) would reveal that Surendra Nath Sardar has 1/2 share in 14 decimals land of the suit plot and Gouri had acquired 07 decimals of suit plot. The defendant nos. 1 and 3 acquired only 07 decimals land of the suit plot by virtue of a deed of gift from Gouri Bala. During cross-examination, the PW-1 has deposed that her mother and two brothers, Sadhan and Samar are co-sharers of the suit plot.

The plaintiff had failed to prove that her mother acquired title in the suit plot by way of purchase from Manick Lal Ghosh. PW-1 has deposed that Sadhan (defendant no.3) has been residing in the suit plot and that he has two pucca rooms. The evidence on record would show that the deed of gift of Surendra and Gouri being Exhibits C and D were acted upon.

The findings arrived at by the Trial Court as well as First Appellate Court on the basis of the aforesaid oral and

documentary evidence, do not appear to be perverse.

On the basis of the said evidence, the views taken by both the courts are plausible. The evidences are based on cogent and credible evidence.

The second appeal is dismissed at the admission stage.

In view of the aforesaid, the application for injunction being CAN 1 of 2013 (old CAN 783 of 2013) stands dismissed.

CAN 2 of 2019 (old CAN 11953 of 2019) is the application for substitution of the respondent no.3, who died intestate on 2nd June, 2009 leaving behind his legal heirs mentioned in paragraph 2 of the said petition. All the substituted defendants are major, sui juri and of sound mind.

The department shall substituted the legal heirs of the deceased respondent no.3 in place and instead of the said deceased defendant within two weeks from date and carry out necessary amendments in the memorandum of appeal.

CAN 2 of 2019 (old CAN 11953 of 2019) is accordingly, disposed of.

CAN 3 of 2019 (old CAN 11961 of 2019) is also disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)