

Item-50 26-04-2022

sg Ct. 8

FAT 352 of 2019
CAN 1 of 2019 (old CAN 8323 of 2019)
CAN 2 of 2019 (old CAN 8355 of 2019)

Swapan Saha @ Sapan Kumar Saha
Versus
Gajananda Agarwal & Ors.

Mr. A.K. Routh, Adv.

...for the appellant

In Re: CAN 1 of 2019 (old CAN 8323 of 2019)

The affidavit of service filed in Court is kept with the record.

In spite of service, none has appeared on behalf of the respondents to oppose the application for condonation of delay.

There is a delay of 97 days in presenting the memorandum of appeal. Sufficient cause is being shown for not being able to prefer the memorandum of appeal within the period of limitation. The delay of 97 days in presenting the memorandum of appeal is condoned.

Accordingly, the application for condonation of delay is allowed.

CAN 1 of 2019 (Old No: CAN 8323 of 2019) stands disposed of.

In Re: FAT 352 of 2019 and
CAN 2 of 2019 (old CAN 8355 of 2019)

The appeal is arising out of a judgment and decree dated 20th March, 2019.

In a suit for declaration and injunction, the plaintiff in a suit has claimed to be the sole and absolute owner in respect of the premises No.11/1, Baithakhana First Lane, Kolkata. The defendants disputed the said claim. The plaintiff purchased the premises from the

erstwhile owners, Soumen Paul and Shankar Paul by registered deeds of conveyance dated 19th January, 2007 and 22nd January, 2007. The plaintiff claims that after acquiring the ownership, the plaintiff came to know that Shankar's father Dipen, during his lifetime, had sold 372 sq.ft. on the ground floor of the premises to the defendants. The defendants in the written statement have relied upon the document by which the defendants have purchased the property from Shankar's father, Dipen. It appears from the evidence that Soumen sold his undivided half share in the property to the plaintiff. Dipen was surviving by his son Shankar. Shankar also transferred his undivided interests in the suit property in favour of the plaintiff. During the evidence, the certified copy of the sale deed executed by Shankar was exhibited and marked as Exhibit-4. This instrument recites in no uncertain terms that in May 2003, by a duly registered conveyance, Dipen, out of his undivided interests in the premises, had transferred a shop room and another adjacent room, on the ground floor of the premises to the father and son. Shankar by his own sale deed sold the remainder of the undivided interest to the plaintiff.

It was on the basis of such evidence, the right of the plaintiff to claim exclusive ownership over the suit property was denied and the Trial Court was justified in observing that the plaintiff could have asked for partition as both the plaintiff and the defendants have become co-sharers in respect of the suit property. Moreover, it appears from the deeds disclosed by the defendants that the defendants have purchased 372 sq.ft. on the ground floor and actually comprised of one shop room, one residential room together with bath, privy, water tap, water line, drainage and sewerage and there is no evidence on record to show that the defendants have occupied in excess of the area that

they had purchased from Shankar.

On such consideration, the Trial Court was also justified in refusing to pass decree in favour of the plaintiff.

In view of the above, we do not find any reason to interfere with the decree passed by the Trial Court.

The appeal fails.

The appeal being, FAT 352 of 2019 is dismissed. CAN 2 of 2019 (old CAN 8355 of 2019) is also dismissed.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)