

Item-33 16-02-2022

SA 123 of 2021

sg Ct. 8

Kashinath Dhara
Versus
Minati Das & Ors.

(Through Video Conference)

Mr. Tanmay Mukherjee, Adv.
Mr. Kajal Ray, Adv.
Mr. Aditya Sen, Adv.
Mr. K. Raihan Ahmed, Adv.
...for the appellant

This second appeal has come up for admission.

Mr. Tanmay Mukherjee, learned Counsel appearing on behalf of the appellant submits that the learned Trial Court has caused substantial error of law in arriving at a finding that the defendant is a licensee on a complete misreading of the evidence and prayed for admission of this appeal on Ground No. vii, which reads as follows:

“(vii) For that the Learned Judge in the both Courts below ought to have discussed about the evidence which lead to the conclusion that the defendant is a licensee but only one line judgment has been passed by the Learned Court below while deciding issue no. 7 and 8 which is perverse and cannot stand in the eye of law”.

In order of appreciate the said argument on behalf of the appellant, it is necessary to refer to some of the facts.

The plaintiffs filed a suit for declaration and eviction of licensee. The plaintiff claimed that the suit property originally belonged to one Ram Chandra Das, who is the husband of the plaintiff no.1 and father of the plaintiff nos. 2 to 5. He died on

15th June, 1992 leaving behind the plaintiffs as legal heirs and owners of the suit property. The defendant is the brother of the plaintiff no.1 and out of love and affection, he was allowed to live in the suit premises after the death of the plaintiff no.1.

In 2009, a dispute arose between the plaintiff nos.2 to 4 and the same defendant in respect of the another property and the plaintiffs filed a title suit being T.S. 220 of 2009 against the present defendant and in the said suit, the defendant alleged to have admitted that he is living in the suit property as licensee. The said suit was dismissed. The plaintiffs alleged that upon dismissal of the said suit, the defendant started challenging the plaintiffs' right, title and interest over the suit premises and on 1st October, 2014, the defendant employed labourers to make addition and alteration on the suit premises without permission of the plaintiffs. It is due to such conduct, the plaintiffs revoked the licence of the defendant and asked the defendant to quit and vacate the suit property.

The defendant entered appearance in the suit and filed written statement. In the written statement, he denied the relationship between the plaintiffs and the defendant as one of the licensee. The defendant, however, admitted the earlier suit and it is alleged that the plaintiffs have never informed him that he would be treated as licensee in respect of the suit premises. The only issue that is necessary for consideration was whether the defendant was a licensee of the plaintiffs in respect of the suit premises.

The plaintiffs exhibited five exhibits, namely, certified copy of the registered power of attorney being Exhibit-1,

certified copy of partition deed being no. 2387/1983 being Exhibit-2, certified copy of deposition sheet of witness DW1 in T.S. 220 of 2009 being Exhibit 3, Khajna receipt issued by BL & LRO office being Exhibit-4 and Panchayat tax receipt being Exhibit-5. The defendant in support of his case has exhibited one LRROR being Exhibit-A and certified copy of judgment and decree passed in T.S. 220 of 2009 being Exhibit-B.

On the basis of the oral and documentary evidence, the learned Trial Court arrived at a finding that the certified copy of the judgment and decree in T.S. 220 of 2009 would show that the previous suit filed between the parties was dismissed on contest but the same suit was not for eviction of the defendant from the suit property but for declaration filed by the plaintiffs which is against the defendant. However, the said suit was not concerning the suit plot of the present suit. Moreover, the learned Trial Court had relied upon the deposition of the defendant in the previously instituted suit where the defendant was cross-examined. The defendant admitted that he resided in his sister's house namely, plaintiff no.1. This evidence was accepted by the learned Trial Court to return a finding that the defendant has no right, title and interest over the suit property. This decree was challenged before the learned Appellate Court.

The Appellate Court on appreciation of the evidence, both oral and documentary, accepted the findings of the learned Trial Court. There is a clear finding of fact that the suit properties of the suits are different not only with regard to the properties but also with regard to the reliefs claimed.

The defendant appears to have been changed his status in

the present suit from licensee to a rightful occupant. Admittedly, the defendant is not a legal heir of the original owner of the property. The defendant has to establish at the trial that he has right, title and interest over the suit property, which he had been failed to establish. The plaintiffs have discharged initial onus by establishing their right, title and interest in the suit property. Moreover, apart from the documentary evidence, the plaintiffs were able to establish the status of the defendant as a licensee on the basis of the admission of the defendant in the Title Suit 220 of 2009.

Admission is the best piece of evidence. The second appeal can be admitted provided there is substantial questions of law involved. Having noticed no perversity in the findings of the learned Trial Court or the learned Appellate Court, we are not inclined to admit the second appeal.

The appeal stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)