

Item-73. 20-12-2022

SAT 310 of 2010

Abdur Jobbar

sg

Ct. 8

Versus
Dober Sk.

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 appellant. The appeal is of the year 2010.

In spite of notice, the judgment and decree dated 28th April, 2010 and 7th May, 2010 affirming the judgment and decree dated 31st August, 2009 and 5th September, 2009 passed by the learned Civil Judge (Junior Division), 2nd Court, Katwa is the subject of challenge in the second appeal.

We have carefully considered the judgments of the Trial Court as well as the First Appellate Court and we have also taken into consideration the grounds of the appeal in order to ascertain whether the second appeal involves any substantial question of law.

Both the courts have arrived at a finding that the plaintiff has failed to prove that there is an oral agreement for re-conveyance of the suit property on demand of loan amount. The appellant/plaintiff contended that in spite of repayment of the

loan, the defendant did not re-conveyance the property in favour of the plaintiff.

It has been rightly held that to bring the suit under the purview of section 37A of the Bengal Money Lenders Act, 1940 and under Section 58C of the Transfer of Property Act, the plaintiff/appellant would be required to prove that the transaction was a mortgage by conditional sale and not out and out a sale. Exhibit A, namely, the deed of sale does not speak of any of the conditions as mentioned in section 58C of the Transfer of Property Act. The plea of money lending of the appellant was also not accepted as there was no evidence on record to show that the creditors are money lending in terms of the provisions of the said Act.

The Trial Court as well as the First Appellate Court had, in our view, correctly interpreted Section 58C of the Transfer of Property Act and Sections 8 and 37A of the Bengal Money Lenders Act, 1940, since amended, in returning a finding on the basis of the evidence against the appellants.

On such consideration, we do not find any reason to admit the second appeal and the second appeal is dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)