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Ct-08

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SA 84 of 2022
with
I.A No. CAN 1 of 2017(Old No. CAN 9434 of 2017)

Khudiram Tentulia & Ors.
Vs.
Narayan Chandra Roy & Ors.

Mr. Pinaki Ranjan Mitra
Mr. Asoke Nandy
.... For the Appellants

Re: CAN 1 of 2017(Old No. CAN 9434 of 2017)
(Substitution)

This is an application for substitution filed consequent upon the death of the appellant no. 1, namely, Khudiram Tentulia, who died intestate on 11th July, 2017 during the pendency of the appeal, leaving behind him the heirs and legal representatives, as described in the cause title of the said application.

After hearing the learned counsel appearing for the appellants and considering the fact that the heirs and legal representatives of the deceased appellant no. 1 are major and sui juris and the right to sue and be sued survives in favour of such heirs mentioned in this application, we allow the application for substitution and direct substitution of heirs and legal representatives of deceased appellant no. 1, as described in the cause title of the said application in stead of and in place of the deceased appellant no. 1 in the appeal.

The application being CAN 1 of 2017(Old No. CAN 9434 of 2017) is thus allowed without any order as to costs.

Office shall carry out the necessary amendments in the cause title of the Memorandum of appeal, as indicated hereinbefore within one week from date.

Now we take up the appeal for admission.

The appeal has arisen out of the judgment and decree dated 31st May, 2016 passed in Title Appeal No. 40 of 2015 by the learned Additional District Judge, Fast Track, First Court, Burdwan, affirming the judgment and decree dated 16th May, 2015 passed in Title Suit No. 85 of 2008 by the learned Civil Judge (Junior Division), Third Court, Howrah.

The plaintiffs filed a suit praying for a decree of declaration of title and cancellation of registered sale deed being no. 2077 dated 26th March, 1969 in respect of the property mentioned in the schedule of the plaint of Title Suit No. 85 of 2008.

The Trial Court dismissed the suit on the ground of limitation and non-joinder of necessary parties. The Trial Court noticed various discrepancies in affidavit-in-chief of Khudiram on material facts. The plaintiffs relied upon certified copy of CS record of rights of Khaitan No. 904 (Exhibit-1). From which it appeared that the name of Kitti Bas Tentule was recorded as *raiyat stititban* in respect of plot no. 623, measuring area of 20 decimals of bastu land and plot no. 625 measuring 39 decimals are of pond and one rent receipt dated 12th February, 2009 (Exhibit-2) showing deposit of rent by Khudiram Tentule in the name of Nibaran Tentule as *raiyat* in respect of 11 decimals of land of khaitan no. 432. Besides suit plot nos. 623 and 625, the plaintiffs did not file

any paper showing their title in respect of other plots.

The documentary evidence produced by the defendants, namely Exhibits A to G would show the devolution of title and description of land amongst the various defendants.

The plaintiffs alleged that the said deed was fraudulently obtained and is required to be declared null and void. Gyanendra was taken to Registry office under misrepresentation that a power of attorney would be registered and then the sale deed was executed without payment of consideration. It is very important that in a suit for cancellation of a document, the plaintiff has to establish the date of knowledge of such document. This is vital that in the instant case the document was executed in the year 1969 and the suit was filed in 2008. The plaintiffs were unable to show as to when they came to know about the existence of document and/or its contents. Even if, the document is within the knowledge of the plaintiffs and the plaintiffs have reason to believe that the existence of such document might interfere with their right, it is for them to make an enquiry as to the existence of the document and its contents. The registration of a document itself is a public notice. The plaintiffs cannot sleep over their right. Moreover, third party interest would accrue in between.

The concurrent findings on facts not being perverse and both the courts below dismissed the Title Suit and Title Appeal, we do not find any reason to admit the second appeal.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

(Siddhartha Roy Chowdhury,J.)

(Soumen Sen, J.)