

06.09.2022
SL No.16
Court No.8
(gc)

**SAT 256 of 2014
CAN 1 of 2016
(Old No: CAN 12202 of 2016)**

**Bimal Chakraborty
Attorney Holder of Chaya Chakraborty & Ors.
Vs.
Bijoy Chakraborty & Ors.**

Ms. Chama Mookherji,
Mr. Anujit Mookherji,
Ms. Rinky Kumari Shaw,
...for the Appellants.
Mr. S. Bhattacharyya,
Mr. Himadri Kr. Mahata,
Mr. Suman Kr. Bhattacharyya,
...for the Respondent
Nos.15(i) to 15(vii), 12, 13 & 16.

The second appeal has come up for admission.

The second appeal is arising out of a first appellate decree affirming judgment and decree dated 31st July, 2010 passed by the learned Civil Judge (Junior Division), 7th Court, Howrah in T.S. 55 of 2007.

The learned Counsel appearing on behalf of the appellants submits that both the Courts have erroneously relied upon the decree passed by the learned Single Judge in Civil Rule No.541 of 1971. It is submitted that the civil revisional application was not maintainable at the relevant point of time as it was an appeal against an appellate decree.

Shorn of details, it is an admitted position that the controversy between the parties was with respect to 2 sataks of land situated at the northern part of Dag No.472 belonging to the appellants and southern part of Dag

No.471 belonging to the respondents. However, there is no dispute that Dag No.472 belongs to the appellants and Dag No.471 belongs to the respondents. Both the Courts below have found that prior to the filing of Title Suit No.55 of 2007 which is the present suit out of which the impugned order was passed, there were several litigations in between the appellants and respondents in respect of the self-same properties situated at the two Dag Nos. mentioned above. The Title Suit No.390 of 1962 was filed by the original appellant, Lankeshwar Chakraborty, for declaration and injunction that 'Kha' schedule property, that is, northern part of Dag No.472 is part of 'Ka' schedule property, that is, Dag No.472. It would appear from the judgment in Title Suit No.390 of 1962 that the 'Kha' schedule property is the triangular portion towards the north of Dag No.472. Bimal Chakraborty, P.W.1 during his cross-examination has stated that the suit is for the triangle area of land. In the judgment in Title Suit No.390 of 1962, the learned Trial Court has clearly arrived at a finding that there is an erroneous recording at the time of CS operation as the defendants were not properly represented as a result whereof 'Kha' schedule land was recorded under disputed plot No.472. The defendants were admittedly found to be in possession and the CS record of rights was manifestly wrong. The Trial Court declared that 'Kha' schedule land of the plaint is not part of 'Ka' schedule land. This judgment was initially reversed by the Appellate Court on 28th June, 1968 in

Title Appeal No.499 of 1966. The respondents preferred a civil revisional application under Section 115 of the Civil Procedure Code that was registered as Civil Rule No.541 of 1971. The learned Single Judge disposed of the said Civil Rule by setting aside the judgment passed in T.A. No.499 of 1966 dated 28th June, 1968 by reason whereof the judgment and decree passed in T.S. No.390 of 1962 revived. It appears from record that Rule was issued after admission of the civil revisional application. However, none represented at the time of final disposal of the Rule. The Civil Rule No.541 of 1971 was disposed of on 21st February, 1973.

The learned Counsel for the appellants submits that the High Court did not have the jurisdiction to receive the said application under the revisional jurisdiction. We, however, are not inclined to accept the said submission as irrespective of the nomenclature attached to the said application, the High Court was competent to dispose of the said matter on consideration of both the judgments. Moreover, that order remained unchallenged till this date. It is preposterous to suggest that the present appellants were not aware of the said judgment. At this distant point of time, it is difficult to accept the said submission that the Rule was never served. The learned Single Judge after being satisfied that the Rule was duly served upon the predecessors of the present appellants disposed of the Rule by a reasoned judgment. The Trial Court as well as the Appellate Court has relied upon the said judgment

passed in Civil Rule No.541 of 1971. They were bound by the said decisions. The appellants have not claimed any declaration that the said appellate decree passed in Civil Rule is not binding upon them or required to be set aside. The judgment having attained finality cannot be reopened by this process. Apart from the aforesaid the order and decree passed in T.S. No.4 of 2004 would show that there is a clear finding in favour of the defendants that they are the owner of 2 decimal of land in Dag no. 471. The judgment in T.S. No. 390 of 1962 and T.S. No.4 of 2004 clearly establish the right of the defendants.

We do not find any substantial questions of law involved in the second appeal. The second appeal stands dismissed at the admission stage.

Accordingly, the second appeal being SAT 256 of 2014 and the application being CAN 1 of 2016 (Old No: CAN 12202 of 2016) stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)