

DL. July 26,
4. 2022

S. A. 47 of 2021

Sri Debasish Dasgupta
Vs,
Sri Tushar Kanti Chakraborty

The appellant is not represented, nor any accommodation is prayed for. The matter was adjourned earlier in order to enable the appellant to produce the certified copies of the depositions, the reason being that from the impugned judgment it is evident that the appellant is out of possession of the property in suit. We may refer to the finding of the appellate court below in this regard which runs as follows :

“While being cross examined the plaintiff’s father as the PW 1, stated that the defendant has started constructing a house over the property in dispute. The witness has also stated that there stands an incomplete house on such property. In juxtaposition to these statements one must place and consider the plaintiff’s averment in the plaint to the effect that he had plans to build a house on the property in dispute. The plaintiff had only thought of building a house; it is not the plaintiff’s case that he had already begun construction but the evidence says that there already stands a semi-constructed house on the property in dispute and it is also established (and that too from the mouth of the plaintiff’s father) that such construction has been made by the defendant.

From these statements (as quoted above) by the PW 1,

it is absolutely logical and legal to infer that the defendant is in possession over the property in dispute. He has his semi-constructed house over the land which the plaintiff claims to be his own. The PW 2's statement in cross examination is also an unmistakable pointer to the conclusion that the plaintiff had never obtained actual possession over the property in dispute. This witness had not only signed the plaintiff's deed as a witness but he is also the son-in-law of Chand Bibi. According to the witness, Chand Bibi had not handed over possession of the property in dispute to any person."

We find no contrary evidence to take a different view in the matter. As such, we do not find any substantial question of law involved in this appeal.

Under such circumstances, the appeal is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

dns

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)