

16 27.9.2022
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SA 11 of 2021
with
I.A No. CAN 1 of 2016(Old No. CAN 12375 of 2016)

Ct-08

Abdul Rashid alias Abdur Rashid & Anr.
Vs.
Nemai Chandra Sadhukhan & Ors.

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with

SA 12 of 2021
with
I.A No. CAN 1 of 2016(Old No. CAN 12378 of 2016)

Abdul Rashid alias Abdur Rashid & Anr.
Vs.
Nemai Chandra Sadhukhan & Ors.

Mr. Rabindra Narayan Dutta
Mr. Sibasis Ghosh
Mr. Hare Krishna Halder
Mr. Kaushik Bhattacharyya
Ms. Debjani Bandyopadhyay
Mr. A. Mukherjee
... For the Appellants in
both the appeals

The suit and the counter claim are disposed of by the learned trial judge on 28th June, 2011. The plaintiffs filed a suit for declaration and permanent injunction. The defendants in the written statement have prayed for decree of eviction against the plaintiffs by treating them as sub-tenants.

The trial court's decree has been affirmed by the first appellate court on 30th May 2016.

The appellants have failed to establish the tenancy under the defendants and the defendants having established their right of ownership in the property, the suit filed by the plaintiffs was dismissed and the counter claim was decreed. There are discrepancies in the evidence of the plaintiffs/appellants with regard to the induction of them in the suit premises. The appellants relied upon Exhibit-1 to prove tenancy since December 1983 but the defendants have contended that they

are inducted in the suit premises in the year 1987.

The first appellate court relied upon the said Exhibit-1 observed that the said document demolishes the case of the plaintiffs as tenants under the defendants since 1983. Kachha receipt shows that Rs.2,500/- was paid in the month of December, 1983 but the defendants have failed to substantiate the person who has issued the said kachha receipt and who had received the said receipt. The purpose of the said receipt also not clearly discernible from Exhibit-1. It transpired that said amount was paid on 1st August, 1990 and 25th March, 1991. The plaintiffs could not explain if they were intimated in the month of September 1987 then why they paid rent in the month of December, 1983. The defendants have clearly denied the execution of any such receipt. The plaintiffs have failed to discharge their onus with regard to the plaint as tenancy in respect of the suit property.

The concurrent findings of facts based on oral and documentary evidence does not call for any interference in the second appeal and we do not find any substantial question of law involved in these second appeals.

Both the second appeals are, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of dismissal of the both the second appeals, the connected applications appearing on today's list are also dismissed.

There will be no order as to costs.

(Uday Kumar , J.)

(Soumen Sen, J.)

