

14.11.2022
SL No.46
Court No.8
(gc)

SA 141 of 2022
CAN 1 of 2014 (Old No: CAN 3393 of 2014)

Purabi Chatterjee & Ors.
(Mrinal Kanti Banerjee, since deceased)
Vs.
The Mayor, Howrah Municipal Corpn. & Ors.

The appellants are not represented nor any accommodation is prayed for on their behalf. The appellants were also not represented on the earlier occasion.

In view of our observation in our previous order, we propose to take up this matter to decide whether the second appeal involves any substantial questions of law on which this second appeal could be admitted.

The plaintiff filed a suit for recovery of possession, declaration, permanent and mandatory injunction. The suit was dismissed. The claim in the suit is essentially in respect of service privy. On the basis of the evidence, it would appear that the entire property was sold in favour of the defendant on 15th December, 1995 without reserving any right or retaining any portion of the schedule now claimed to be 'mathor passage'. It was by reason of the fact that the system of service privy was long abolished there was no reason for the plaintiffs to retain the 'mathor passage'. Moreover, the said passage would not have come to any use to the plaintiff for which the plaintiff sold the said passage also to the defendant. It is

also an admitted position that the plaintiff has separate entrance from Shibatala Lane main road. In absence of the service privy, the mator passage became redundant. It is also significant to mention that the plaintiff has not prayed for rectification of the deed alleging that the schedule of the property has been wrongly described or it has a mistaken identity. The main contention of the plaintiff/appellant was that when the defendant No.4/respondent tried to assert right over 'C' schedule property and tried to raise construction over the same, the plaintiff came to know about the mistakes in the said deed. According to the appellant, the respondent was trying to obtain a sanctioned plan from the Howrah Municipal Corporation towards the end of 2000 or at the beginning of 2001. However, on consideration of Exhibit-E (sanctioned plan), it reveals that the said building plan was sanctioned on 22-01-1998 and the said plan was valid for three years and the same was thereafter never extended. The defendant No.4/respondent contended that the construction was fully completed by the end of December, 2000. The entire case of the original plaintiff and as adopted by his legal heirs was based on alleged mistake in the instrument in which the original plaintiff/owner was one of the signatories but he did not make any claim either to avoid the said deed or to rectify the same. Without any real challenge being thrown to the said deed and in absence of any prayer for cancellation of the said deed or for rectification, in our view, the learned

Trial Judge as well as the First Appellate Court has correctly dismissed the suit. Moreover, the original plaintiff was an adjacent co-owner and the fact remains that the boundary was raised covering the property sold in favour of the defendant between the 1998 and 2000. The alleged mistake, if any, in the said deed was known to the plaintiff latest by 2001. The suit was filed in the year 2008. Hence, it is clearly barred by laws of limitation.

Both the Courts below on consideration of the oral and documentary evidence have returned a finding against the plaintiff. The findings are based on proper appreciation of evidence. There is no substantial question of law involved in this second appeal.

Accordingly, the second appeal and the connected application stand dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)