

**SAT 2527 of 2007**

Ct-08

**Sri Trailakhya Nath Mahato  
Vs.  
Sri Sambhu Nath Paul & Ors.**

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The appeal is of the year 2007. The appeal was filed with several defects. Such defects were removed on 9<sup>th</sup> December, 2022. However, the appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The appeal appeared in the warning list on 29<sup>th</sup> November, 2022 with a clear indication that the same shall be transferred to the regular list on 5<sup>th</sup> December, 2022, since then the matter is appearing in the list.

In order to find out if any substantial question of law(s) is involved in this second appeal we have gone through the judgment of the trial court as well as the first appellate court and the grounds of appeal.

The plaintiff filed the suit for declaration and permanent injunction. The plaintiff claimed right, title and interest in respect of A schedule property. The plaintiff contended that he became the owner of 15 chittaks or 2.2 decimals of land described in A schedule of the plaint. The learned Trial Judge was of the view that the entire measurement is wrong as 15 chittaks of land equal to 1.5 decimals of land and in view thereof 2.2 decimals of land would be equal to more or less 19 chittaks of land. Accordingly, no decree can be executed on the basis of such erroneous description.

The trial court on the basis of oral and documentary evidence arrived at a finding that the certified copy of the CSROR would show that

Guiram Naru, the father of the vendor of the plaintiff, was not a tenant in C.S Plot no. 2208, which is mentioned as A schedule property in the plaint. Exhibit-2 reveals that Khirodh Chandra Naru, the grandfather of the vendor of the plaintiff, was in possession of the land to the north Dag no. 2208. Even it is assumed that that the column of CSROR wherein the possession of the northern plots has been mentioned is wrong and it would be the possession of the given plot number then Khirod was not exclusive possession of the plot no. 2208. After introduction of the Estate Acquisition Act, Khirod became direct tenant and he could not exclusively sale the entire suit property save and except 2 decimals of land of C.S Dag no. 2208. However, from Exhibit-I it would appear that the vendors of the plaintiff sold the entire plot to him to the exclusion of the heirs of Panchanan or the defendants. Hence, the plaintiff cannot acquire exclusive right, title and interest in C.S Plot no. 2208. There are also other discrepancies noted by the first appellate court in relation to the claim of the appellant in the suit property, namely, the tax receipt or the Exhibit no. 3 where the Holding No. of the plaintiff has been recorded in the name of the plaintiff as 351. No amendment has been made by the plaintiff to amend the wrong Holding number.

During cross-examination P.W 1 deposed that in the recital of his deed it was stated that his vendors became owner of the A schedule property by virtue to the deed of family settlement dated 26.9.1958 but the said family settlement deed did not support the sale deed

from which the plaintiff claimed to have acquired title. P.W 1 during cross-examination would not show whether the defendants constructed the sanitary privy after obtaining sanctioned plan from the Municipality.

The sanctioned plan, Exhibit-B, would show that the plan was sanctioned on 8<sup>th</sup> October, 1998 where privy was shown in existence, that is to say, prior to the sale.

The allegation of the plaintiff is that the unauthorised construction has been made in the year 1998. Exhibit-C, the title deed of the defendants was executed in 1949 and till then the title shed room is in existence. P.W 1 during cross-examination admitted that the structures of the defendants are situated on their own land. Commissioner's report also supports such encroachment.

The first appellate court arrived at relied upon the same set of finding of the trial court and held that there is no cogent and satisfactory evidence regarding actionable nuisance. The appellate court also relied upon the report of the Commissioner and the sanctioned plan(Exhibit-4) and noticed that no such application has been filed for acceptance of additional evidence.

On such consideration, we do not find any reason to admit this second appeal.

The second appeal accordingly fails.

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

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

