

Item-79. 20-12-2022

SAT 415 of 2010
CAN 1 of 2010 (old CAN 9307 of 2010)

sg

Ct. 8

Nitai Mondal & Ors.
Versus
Sudebi Mondal & Ors.

The matter appeared in the warning list on 29th November, 2022 and thereafter transferred to the regular list on 5th December, 2022. There was a clear indication in the list that the matter shall be transferred to the daily cause list on 5th December, 2022 and since then the appeal is appearing in the list.

The appellants are not represented nor any accommodation is prayed for on behalf of the appellants. The appeal is of the year 2010.

It appears that on 18th March, 2011, the matter appears before a coordinate Bench when upon noticing the defects the matter was directed to go out of list. The department in its report dated 16th December, 2022 reported that the defects pointed out by the Additional Stamp Reporter on 2nd December, 2010 have not yet been removed. It was open for us to dismiss the second appeal at the admission stage for non-removal of the defects and keeping the matter pending for the last 12 years. However, we propose to consider the matter regarding admission of the second appeal on the basis of the available record.

The second appeal is arising out of an appellate decree dated 21st June, 2010 affirming the judgment and decree dated 29th April, 2009 passed by the learned Civil Judge (Junior Division), Dakshin Dinajpur at Balurghat.

We have carefully considered the judgments of the Trial Court as well as the First Appellate Court. The said suit was filed by the plaintiff for declaration of right, title and interest and for recovery of khass possession was decreed on contest in favour of the plaintiff by the Trial Court.

The basis of the claim appears to be that the suit property along with other properties previously belonged to the father of the present plaintiff, Shri Kishori Mohan Mondal and other co-sharers and the R.S.R.O.R. was accordingly prepared. After the death of said Kishori Mohan Mondal the interest of Kishori Mohan Mondal over the suit plot decended upon his sons as legal heirs who are here in the instant suit is the plaintiff, the father of the defendants, Sri Gurupada Mondal and other son, Narayan Mondal. Accordingly, after his death the said sons of Kishori Mohan started possessing the suit property in ejmally and subsequently, in order to avoid future complications they partitioned the suit property by way of amicable settlement and as such the plaintiff had been enjoying over his own share of property by way of making homestead cow-shed etc.

Similarly, the father of the present defendants after getting his own share was accordingly possessing the same and was residing by way of dwelling. In terms of such physical possession over their respective share the LRROR was prepared in favour of the co-sharers and after getting such separate possession, the plaintiff has been possessing over the suit property for more than 12 years since the date of such amicable partition.

Due to marriage of the elder son of the plaintiff, she shifted her residential accommodation to a different place at plot no. 108

which was purchased by his son and there he started living with the family of the said married son. By reason of such shifting, the earlier dwelling house over the ancestral property remained vacant and on the request being made by the present defendants for a temporary accommodation, the plaintiffs allowed the defendants to reside in the suit property. The said defendants were the near relatives as being the nephews and the said permissive possession was given in the month of January, 2002 and during that time it was agreed while giving permissive possession that the present defendants would not claim any right, title, interest over the suit property. The defendants in or about December, 2004 revoked the licence and wanted to shift to the ancestral dwelling house due to inadequate accommodation at his son's place. A notice was earlier served upon the defendants as they were not readily agreeing to shift the suit premises. The defendants in the suit contested the proceeding and in which they have contended that the plaintiff has sold the suit premises in favour of the father of the defendants as receiving a consideration of Rs.10,000/-. The defendants alleged that in spite of receiving the said amount, the plaintiff declined to execute a registered deed in favour of the defendants. The defendants denied right, title and interest of the plaintiff.

On the basis of the pleadings and the evidence both oral and documentary, the Trial Court arrived at a finding that the plaintiff is the owner of the property in question and the defendants were given permissive possession.

The plaintiffs in support of his claim had filed rent receipts in respect of the suit property and also filed the documents which clearly mentioned the specific share of each co-sharer over the suit

plot and from the exhibit 2 it would appear that two decimals of the suit property is still recorded in favour of the plaintiff.

The defendants on the other hand could not substantiate their claim of ownership either by virtue of any agreement or in lieu of alleged consideration paid to the father of the plaintiff nor could succeed in its plea of adverse possession.

In the absence of the defendants proving its alleged claim and oral self-transaction in demand of consideration money and having regard to the fact that the plaintiffs have proved their right, title and interest in respect of the suit property and undoubtedly, the plaintiffs have better stand than the defendants in the suit property, in our view, both the courts have rightly returned a finding in faour of the plaintiff. The concurrent finding of facts are based on credible and cogent evidence and the second appeal is dismissed at the admission stage.

(Uday Kumar, J.)

(Soumen Sen, J.)