

08.09.2022
SL No.23
Court No.8
(gc)

SAT 445 of 2016
CAN 1 of 2017 (Old No: CAN 8282 of 2017)
CAN 2 of 2017 (Old No: CAN 12143 of 2017)
CAN 3 of 2019 (Old No: CAN 9188 of 2019)

Smt. Saraswati Guha Majumdar & Ors.

Vs.

Sri Gopal Dutta & Ors.

Mr. Debasis Sur,
Mr. Angshuman Patra,
Mr. Hare Krishna Halder,
...for the Appellants.
Mr. Arup Mondal,
...for the Caveator/Opposite party.

Re: CAN 1 of 2017
(Old No: CAN 8282 of 2017)

Sufficient cause being shown for not being able to appear on 21st August, 2017 when the second appeal was dismissed for default.

We recall the order dated 21st August, 2017 and restore the second appeal to its original file and number.

Accordingly, the application for restoration being CAN 1 of 2017 (Old No: CAN 8282 of 2017) stands disposed of.

By consent of the parties the second appeal is taken up for admission. We have heard the learned Counsel for the parties.

Shorn of details, the plaintiffs filed a suit for eviction. The plaintiffs stated that the defendants were habitual defaulters and they have contravened clauses (m), (o) and (p) of Section 108 of the Transfer of Property Act. The plaintiffs also claimed that they reasonably

required the suit premises for their own use and occupation. The grounds for eviction were unauthorized construction and reasonable requirement. The defendants contested the said suit. It was alleged that an agreement for sale was concluded between the parties on 12th April, 1980 and by reason of such agreement, the relationship between the parties has altered. The defendants made a counter-claim for specific performance of the agreement for sale dated 12th April, 1980 and for injunction. The defendants contended before the learned Trial Court that they are not tenant and claimed their right on the basis of an irrevocable licence. They have admitted in their evidence that they made a prayer before the settlement authority for recording their names in the Khatian on the strength of the agreement for sale and their names have been recorded accordingly. The settlement record would show that their names were recorded as permissive possessor which is evident from Exhibit-E which is an order passed in Case No.07 to 11 under Section 51A(1) of the W.B.L.R. Act. It transpires that the agreement for sale was not executed by all the co-owners of the property. The agreement for sale is not binding on all the plaintiffs. They have not consented to the sale of the property in favour of the respondents. The appellants at the best would claim their share in respect of the said properties. The defendants did not take any step for execution of a sale deed in their favour since 1980. There is a lapse of almost 20 years in making a

claim towards specific performance. It is quite clear that other co-sharers have denied their obligation to execute any agreement in favour of the appellants. The agreement for sale was admittedly not signed by all the parties and in addition to that, the enforcement for agreement of sale was a subject matter being T.S. No.62 of 2002. The Trial Court on the basis of the evidence arrived at a finding that the plaintiffs were able to establish unauthorized construction and reasonable requirement. The Appellate Court elaborated on the issue of reasonable requirement has arrived at a factual finding that the suit property is reasonably required by the plaintiffs. The suit property was originally owned by one Monorama Dutta. Thereafter, her husband Mukunda Dutta and other plaintiffs and some respondents became the joint owners and were possessing the property jointly. The two-fold challenge by the defendants before the Trial Court as well as the Appellate Court was that the licence is irrevocable since 1956 and there is an agreement for sale between Narayan Chandra Guha Mazumder, the predecessor of the present possessor and Mukunda Dutta, the predecessor of the present respondents. In addressing the issue whether Narayan Chandra was a licensee from the year 1956. The appellants could not produce any document or evidence to establish the date of commencement of the irrevocable licence. The certified copy of the order in objection case under Section 51A(1) of the West Bengal Land Reforms Act, 1956 filed by Narayan Chandra being

Exhibit-E to which we have referred to above. Narayan Chandra contended that he had been living in the suit property since 1972. There is apparent contradiction and inconsistency between the pleadings and the statements made in the objection petition. The plaintiffs could not produce any tenancy agreement or rent receipt. However, the documents filed in M.P. Case No.588 of 1981 were marked as Exhibits 7 and 8, wherefrom it appears that the predecessor of the appellants/defendants, namely, Narayan Chandra was living in the suit premises as a tenant. The learned Appellate Court has rightly observed that although the admission of Narayan Chandra in the said proceeding may not be a conclusive proof and the fact that he was a tenant in the suit premises, however, such admission is significant specially when there is a dispute regarding the relationship between the parties. The name of Narayan Chandra recorded in the LR ROR as permissive possessor was based on the agreement for sale and in respect whereof the suit for specific performance was pending being T.S. No.62 of 2002. By the time, the appeal was heard and the said suit was dismissed on contest.

The learned Counsel for the appellants before us is unable to submit the present status of the said appeal. The Appellate Court has proceeded on the basis that in absence of any finding in favour of the appellants in the suit for specific performance and having regard to the cogent evidence available to support the case of the

plaintiffs for eviction on the three-fold ground, the Trial Court has not committed any mistake in decreeing the suit in favour of the plaintiffs. In fact, the Trial Court has made an observation with regard to the specific performance of the contract and denied such right. No appeal was preferred against the said finding of the learned Trial Court. Accordingly, before the First Appellate Court in absence of any appeal challenging the finding of the learned Trial Court with regard to denial of right of specific performance, the First Appellate Court would have only decided the merits of the claim in the suit filed by the plaintiffs for eviction. The decree dismissing the counter-claim was not appealed against. In view of such concurrent findings of facts supported by oral and documentary evidence, we are not inclined to admit the second appeal at the admission stage.

The second appeal, accordingly, stands dismissed at the admission stage.

In view of the dismissal of the second appeal, the connected applications also stand dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)