

Item-21. 15-12-2022

sg

Ct. 8

SAT 2617 of 2007

Tamosi Pal

Versus

Subhas Patra @ Subhas Chandra Patra

The matter appears 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 appellant is not represented nor any accommodation is prayed for on behalf of the appellant. The appeal is of the year 2007. The appeal is defective as reported by the Stamp Reporter in his reported dated 21st August, 2009. No attempt has been made to remove the defects. A coordinate Bench by an order dated 11th August, 2015, upon noticing such defect and upon recording the submission made on behalf of the appellant, directed the matter to go out of list with liberty to mention after the defect is rectified.

The appellant has not filed the certified copy of the judgment of the Trial Court. The appellate decree dated 4th July, 2007 affirming the judgment and decree dated 25th July, 2005 passed by the learned Civil Judge (Junior Division), 3rd Court, Serampore in a suit for eviction is the subject matter of challenge in this second appeal.

The suit was dismissed as the appellant could not prove the landlord-tenant relationship. At the appellate stage, the appellant filed an application under Order 41 Rule 27 of the Code of Civil Procedure along with three separate petitions, namely, an

application under Order 1 Rule 10(2), an application under Order 26 Rule 9 and an application for amendment of plaint under Order 6 Rule 17 CPC. The learned First Appellate Court did not allow the addition of party at the appellate stage as the defendant in its written statement has disclosed that he was tenant under one Rabindra Nath Chakraborty in respect of Dag No. 727 and in spite of knowledge of such fact, no attempt was made by the plaintiff to impleade Rabindra Nath Chakraborty in the suit.

Having regard to the nature of the dispute and issues raised before the learned Trial Court, it was open for the appellant to make an application for appointment of a Commissioner to survey the disputed property. The First Appellate Court was not satisfied with the grounds made out for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure as the conditions precedent were absent.

We agree with the view taken by the learned First Appellate Court while affirming the order of the learned Trial Court. Moreover, the appellant is not present.

We do not find any substantial question of law involved in this second appeal. The second appeal stands dismissed at the admission stage. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)