

Dl. December
45. 22, 2022

S.A.T. 484 of 2012

Smt. Anjali Kundu & ors.
Vs,
Shib Sankar Kundu & ors.

The matter appeared in the warning list on November 29, 2022 with a clear indication that the matter would be transferred to the daily cause list on December 5, 2022 before the regular bench. Since then the matter is appearing in the list. The present appeal is of the year 2012.

Today the appellants are not represented, nor any accommodation is prayed for.

The appeal is defective. A co-ordinate bench of this court, on August 30, 2016, granted leave to the learned advocate on record for the appellants to rectify the defects in the memorandum of appeal and to mention the appeal for enlistment after removal of such defects. The department has reported that the defects pointed out by the additional stamp reporter have not yet been removed.

In absence of the appellants, we have carefully gone through the judgments of both the courts below and the grounds taken by the appellants for considering the question of admission of the present second appeal.

The judgment and decree of affirmance dated June 4, 2012 and amended on August 13, 2012 by the learned Additional District Judge, Fast Track Court No. II at Barasat, North 24-Parganas, in Title Appeal No. 26 of 1995 arising out of judgment and decree dated November 24, 1994 passed by the learned Munsif, Second Court at Barasat, North 24-Parganas, in Title Suit No. 148

of 1988, which is a suit for declaration and recovery of possession upon eviction of a licensee and for permanent injunction, is the subject matter of challenge in this appeal.

The plaintiffs/appellants claimed exclusive right, title and interest in respect of the suit property on the basis of a final decree passed in a suit for partition being Title Suit No. 75 of 1962. The plaintiffs/appellants exhibited the certified copies of the preliminary decree and the final decree in Title Suit No. 75 of 1962. The plaintiffs alleged that their mother, Mahamaya, was the erstwhile owner of the suit property and on her death her share was devolved upon the plaintiffs/appellants and Gokul Chandra Kundu being the husband of Mahamaya. Gokul disclaimed his share in the suit property in favour of the plaintiffs/appellants. In support of such disclaimer, the plaintiffs produced exhibit 3, which is a solenama petition filed in Title Suit No. 75 of 1962.

The defendants have raised objection with regard to such disclaimer by pointing out that title in respect of immovable property cannot be extinguished by simple disclaimer.

Apart from the aforesaid, the defendants alleged that the said disclaimer was obtained by fraud. It was alleged that Gokul had never appeared in Title Suit No. 75 of 1962 because he was sick and bedridden.

The defendants deposed as defendants' witnesses no. 1 and 2. However, none had come to depose on behalf of the plaintiffs/appellants. On behalf of the plaintiffs, one Gopal Chandra De, who was a complete stranger to the family, deposed.

The learned trial judge found that the plaintiffs were the

step brothers of the defendants and the defendant no. 3 was the mother of the defendants no. 1 and 2. The evidence would show that the plaintiffs were brought up by the defendants no. 3 and that the family was a joint family upto 1977 even after the death of Gokul in the year 1973.

The plaintiffs/appellants alleged that the suit holding was a three storied building at the time of partition whereas the defendants contended that the second floor was subsequently raised. Exhibit 2 being the final decree in Title Suit No. 75 of 1962 would show that the suit holding was a two storied building at the time of partition. On such ground the trial court as well as the first appellate court accepted the contention of the defendants that Gokul raised the second floor subsequently.

In view of the fact that Gokul had right, title and interest in the suit property, which could not be extinguished by simple disclaimer. The contention that the defendants were the licensee under the plaintiffs could not be proved.

The first appellate court in accepting the finding of the trial court had also discussed the deed of relinquishment and few decisions of the Hon'ble Supreme Court with regard to the implication of the deed of relinquishment without registration.

In view of the aforesaid, we are of the view that the judgments of both the courts below are based on proper appreciation of facts and law. Under such circumstances, we do not find any reason to interfere with the concurrent findings of fact arrived at by both the courts below.

Having found no substantial question of law involved

in this appeal for which the same is required to be admitted, the same is summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

dns

(**Uday Kumar, J.)**

(**Soumen Sen, J.)**