

07.11.2022
SL No.40
Court No.8
(gc)

SA 87 of 2020

**Nirmal Kumar Sutradhar
Vs.
Amal Kumar Biswas, since deceased,
Represented by Lila Biswas & Ors.**

The appellant is not represented even in the second call, nor any accommodation is prayed for on behalf of the appellant. The appellant was also not represented on the earlier occasion. In view of our earlier order dated 29th September, 2022, we proposed to decide the admission of the second appeal on the basis of the available records.

The appeal is arising out of a decree of affirmation of the judgment and decree dated 21st March, 2006 and 29th March, 2006. The appellate decree is dated 21st January, 2011. The plaintiff filed a suit for recovery of possession and eviction of the respondents. It appears from the pleadings and evidence that the right, title and interest and possession of the plaintiff was acknowledged and determined in T.S. No.17 of 1991. The plaintiff claimed that he was dispossessed from 14th March, 1999 by the defendant. From the certified copy of the judgment and decree marked as Exhibits-12 and 12/A, it can be ascertained that the Trial Court in the earlier suit had determined the right, title and interest and possession of the plaintiff in respect of the suit property. The defendant contended that the suit was decreed ex parte against the

present defendant and the plaintiff in connivance with the elder brother of the defendant No.1, namely Amal Kumar Sutradhar obtained fraudulently an ex parte decree. However, no attempt was made by the defendant No.1 to set aside the said ex parte decree. The said decree was passed on merits and no evidence could be produced to show that the said decree was not binding on the opposite parties or that the decree was fraudulently obtained. It is also significant to mention that the T.S. No.17 of 1991 was not only against Mr. Amal Kumar Sutradhar but against all the defendants which include the present the defendant. The present defendant is not contesting the said proceeding. Accordingly, at this stage the said defendant could not contend that the said decree was fraudulently obtained. In view of the fact that the right, title and interest of the plaintiff is clearly established at the trial. The concurrent findings of facts are not to be interfered with in this second appeal.

Accordingly, the second appeal being SA 87 of 2020 stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)