

17.02.2023
SL No.21
Court No.8
(gc)

SAT 9 of 2014

**Narugopal Faujdar
Vs.
Kalabati Debi & Anr.**

The appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

We have seen the report of the department.

The second appeal is arising out of a judgment of reversal in a suit for eviction of a licensee. The Trial Court dismissed the suit on the ground that the plaintiff was unable to furnish chain deeds of title. The schedule to the plaint would make it clear that the suit property was only fraction of suit plot and the plaintiff admitted in course of her cross-examination that there are co-sharers in the suit plot with whom no partition was effected. One of the issues before the Trial Court was whether the plaintiff filed a suit for eviction of a trespasser without impleading the other co-sharers, in other words, whether the suit would be bad for defect of parties. The plaintiff before the courts below relied upon four decisions of different High Courts including our Court, namely, ***Ram Niranjana Das & Ors. Vs. Loknath Mandal & Ors.*** reported at ***AIR 1970 Patna 1, Committee of Management, Ratan Muni Jain Inter College & Ors. Vs. III Additional Civil Judge, Agra & Ors.*** reported at ***AIR 1995 Allahabad 7, Durga Das & Ors. Vs. Solace and Association*** reported

at **2013(1) ICC Calcutta 307** and **Sona Mian Vs. Kebal Kanti Nandi & Anr.** reported at **2013 (1) ICC Gauhati 421** in support of his contention that one co-sharer can maintain the suit for eviction of a trespasser without impleading other co-sharers. The present appellant before the Appellate Court contended that no map was appended to the plaint and they are tried to demonstrate certain discrepancies with regard to the area and nature and extent of interest of the plaintiff in the suit property. In order to prove his title, the plaintiff produced her title deed (Exhibit-1), L.R.R.O.R. (Exhibit-1/a) and Khajna Dakhila (Exhibit-1/b). The appellant contended before the First Appellate Court that he is a licensee in the suit property. In his examination-in-chief he tried to contend that he is in possession of the plot No.222 for the last 20/22 years but he could not produce his title in respect of the property. The possession of the appellant in the suit property is of permissive possession. The appellant could not establish acquisition of title by adverse possession. The Appellate Court proceeded on the basis that when the plaintiff was able to prove her possession of 3.5 decimals of land in plot No.222 of the relevant Mouza, there is no requirement to pray for recovery of possession in the light of the decision of the Gauhati High Court reported in **Sona Mian** (supra).

Moreover, it is established that the status of the defendant in a suit for eviction is not proved; it should be presumed that the defendant is a licensee. (**see Bhagwati**

Prasad Vs. Chandramaul reported at ***AIR 1966 SC 735***).

Insofar as the right of the plaintiff to obtain a decree for possession by evicting a trespasser without making other co-sharers party in the suit, the First Appellate Court had relied upon a decision of our Court in ***Durga Das*** (supra) and a Coordinate Bench decision in ***Sanat Kumar Mullick Vs. Octavious Tea and Industries Ltd. & Ors.*** reported at ***2006(2) CHN 280 Paragraph 12***.

Under such circumstances, we do not find any reason to admit the second appeal.

The second appeal does not involve any substantial question of law and, accordingly, stands dismissed at the admission stage.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)