

Item-5.	24-01-2023	SAT 35 of 2014 CAN 2 of 2014 (old CAN 6887 of 2014) CAN 3 of 2020 (old CAN 1443 of 2020) CAN 4 of 2020 (old CAN 1983 of 2020) CAN 5 of 2022
sg	Ct. 8	

Sanjoy Kumar Biswas & Anr.
Versus
Sumit Biswas & Ors.

Mr. Jayabrata Ghosh, Adv.
...for the appellants

The application for additional evidence at the appellate stage is taken up for consideration along with the second appeal for admission.

We have heard the learned Counsel for the appellants. It is submitted that both the courts have failed to appreciate that the cause of action in the suit filed by Dukhiram is essentially different from the suit filed by them for declaration of title.

However, from the judgments of both the courts, it is quite clear that Dukhiram, during his lifetime, filed a suit for declaration and injunction. The title of Dukhiram was disputed in respect of the suit property. In fact, Dukhiram filed a suit being TS No. 102 of 1986 against the defendant No.5 and his three other brothers, namely, Sri Gostho Bheari Biswas and some other persons. The said suit was dismissed for default.

From the plaint filed on 6th March, 1986 in TS 102 of 1986, it appears that the title deed of the plaintiffs, on which the present plaintiffs are relying in support of their title was the subject matter in the earlier suit which Dukhiram did not pursue at all. The suit

was pending for almost 12 years for Dukhiram not taking any steps. In the meantime, Dukhiram alleged to have transferred the suit property in favour of the present plaintiffs. The present plaintiffs also did not take any steps to implead themselves or substitute themselves in the said proceeding. There was no attempt even to recall the order of dismissal of the suit.

The trial court, in our view, has rightly dismissed the suit. The first appellate court on appreciation of the evidence and the law as it stands, affirmed the decree under appeal. Two documents on which reliance is now being placed almost after eight years, do not further the case of the plaintiffs as CS record of rights does not create any title to the property. The trial court has discussed that a report by the Executive Magistrate on which reliance has been placed by the plaintiffs in support of their title is insufficient and is not being corroborated by any other documents.

On such consideration, we do not find any reason to admit the second appeal. Moreover, we also do not find any reason for not disclosing the said two documents before the trial court and before the first appellate court.

The second appeal is, thus, dismissed. However, there shall be no order as to costs.

In view of the dismissal of the second appeal, the connected applications being CAN 2 of 2014 (old CAN 6887 of 2014), CAN 3 of 2020 (old CAN 1443 of 2020), CAN 4 of 2020 (old CAN 1983 of 20120) and CAN 5 of 2022 are accordingly, dismissed.

The department seems to have overlooked that Mr. Ananava

Bhattacharyya, Advocate has filed vakalatnama along with the application for injunction being CAN 3 of 2020 (old CAN 1443 of 2020).

The department shall make proper correction.

(Uday Kumar, J.)

(Soumen Sen, J.)