

**Subal Kayal & Ors.
Vs.
Sri Soumendra Ray Sardar @
Haridas Roy Sardar & Ors.**

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The appeal is defective. However, no attempt has been made to remove the defects. The appeal is of the year 2015.

The appeal appeared in the warning list on 29th November, 2022 with a clear indication that the same shall be transferred to the regular list on 5th December, 2022, since then the matter is appearing in the list. Therefore, the appellants have due notice.

The defects notified by the stamp reporter in his report dated 04.03.2015 have not yet been removed by the appellants.

The suit is for declaration of title, confirmation of possession and permanent injunction.

We have carefully read the judgment of the trial court as well as the first appellate court.

The suit was dismissed as the plaintiffs had failed to establish their title. The issue before the trial court is whether the plaintiffs have acquired any right, title and interest in the suit property. The trial court considered the certified copy of the registered deed, Exhibit-3, wherefrom it transpires that on the basis of an agreement (Exhibit-2) between Bhutnath Mukhopadhyay and Sushil Bala Devi on one part and Nibaran on the other part three arbitrators were appointed and they declared that Bhutnath and Sushil Bala had no right, title and interest and possession over the suit property, which is

exclusively belonged to Nibaran. The defendants could not also establish that Nibaran had no right, title and interest over the suit property.

The first appellate court concurred with the said finding on re-appreciation of the evidence.

As the suit property was subject matter of arbitration along with other properties, we do not find any merit to interfere with the appeal.

The appeal accordingly fails.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure at the admission stage.

There will be no order as to costs.

(Uday Kumar,J.)

(Soumen Sen, J.)

