

30.03.2023
SL No.16
Court No.8
(gc)

SAT 58 of 2015

**Haradhan Garain
Vs.
Dulal Chandra Pal & Ors.**

The appellant is not represented, nor any accommodation is prayed for on behalf of the appellant. The appeal is of the year 2015. The matter initially appeared in the Warning List on 6th March, 2023 and thereafter transferred to the Regular List on 21st March, 2023. Since then the matter is appearing in the list. The appellant has due notice about the listing of the matter.

The appellate judgment and decree dated 04.09.2014 and 06.09.2014 affirming the judgment and decree of the Trial Court dated 03.04.2014 in a suit for declaration and permanent injunction is a subject matter of challenge in this second appeal.

It appears from the report of the Stamp Reporter dated 26.02.2015 that the appeal was preferred with deficit court-fees. Till date, the deficit court-fees have not been put in. Apart therefrom, there are other defects. We could have dismissed this second appeal for deficit court-fees. However, we have read the judgment of the Trial Court as well as the First Appellate Court and the

grounds of appeal in order to find out whether the second appeal involves any substantial question of law.

The dispute is with regard to the right of easement over the pathway on the basis of solenama decree passed in T.S. No.203/1967. The plaintiff alleged that he has been enjoying the pathway without any interruption and disturbance from any side. The defendant Nos.1 and 2 in spite of the aforesaid fact have created impediment in free use and enjoyment of the pathway. The defendants in their written statement contended that the suit property is a joint property. The property originally owned by the Garains and there has been no partition by metes and bounds among the co-sharers. The defendants denied the existence of solenama decree and contended that plot no.235 is a water body and its bank still remains in the joint property of the co-sharers. The defendants have also mentioned existence of Durga Temple and house in some of the portion of the suit plots that are being used for ingress and egress to the metallic road. The Trial Court on the basis of the pleadings framed seven issues.

The Trial Court dismissed the suit on finding being arrived at that only an easementary right of claim was provided to the predecessor-in-interest of the plaintiff and the plaintiff has no independent right, title and interest in respect of the suit property. The plaintiff was also unable to produce any evidence to the exclusive right, title and interest of the suit property. The plaintiff cannot get the

declaration of title based upon his easementary right. The plaintiff alleged that the 'Ka' Schedule property exclusively belonged to the plaintiff and it served as a passage to the panchayat road and two various other properties adjacent to the suit property.

The Appellate Court while agreeing to the findings of the learned Trial Judge observed that in deciding the issue No.5, the learned Trial Judge has made uncalled for remark with regard to the possessory right of the plaintiff over the suit plot. What actually was meant is a right of easement by prescription and not possessory right. It is elementary that to prove a right of easement by prescription, it is necessary to establish that it was exercised on the property of some other person and it is not as an incident of his own ownership of that property. Acquiring easement right over the suit passage, the predecessor-in-interest of the plaintiff has virtually admitted the ownership of other persons in respect of the suit property. Accordingly, the plaintiff cannot claim right, title and interest in the suit property.

The concurrent findings of facts are unassailable.

The second appeal stands dismissed at the admission stage as it does not involve any substantial question of law.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)